3-570

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 136.

HENRY HENTZ AND LEONARD SPANGENBERG, JR., APPELLANTS,

vs.

THE STEAMSHIP IDAHO, HER TACKLE, ETC., THE LIVERPOOL AND GREAT WESTERN STEAMSHIP COMPANY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED OCTOBER 13, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 136.

HENRY HENTZ AND LEONARD SPANGENBERG, JR., APPELLANTS,

vs.

THE STEAMSHIP IDAHO, HER TACKLE, ETC., THE LIVERPOOL AND GREAT WESTERN STEAMSHIP COMPANY, CLAIMANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Libel	1	1
Stipulation for libellants' costs	5	3
Process	7	4
Claim	8	5
Consent and stipulation for value	10	6
Answer	14	8
Additional answer	20	11
Minutes of district court	26	14
EVIDENCE FOR LIBELLANTS.		
Henry Hentz	30	16
Bill of lading put in evidence	312	175
Libellants rest.		
EVIDENCE FOR CLAIMANTS.		
Summons, pleading, and other papers in the action of Porter vs. Cutting, read in evidence, and marked Exhibit A to M, inclusive	311-340	174-188
Thomas M. Smith	33	18
Steven F. Shortland	34	19
Thomas M. Campbell	35	19
William H. Guion	35	19
William R. Allen	37	20
Richard A. Williams	37	20
Albert L. Conklin	38	21
Peter Corcoran	39	21
Andrew M. Underhill	40	22
Deposition of William J. Porter read	41	22
Exhibit A, J. A. O., referred to in deposition of William J. Porter	55	30
Exhibit B, J. A. O., referred to in deposition of William J. Porter	55	31
Exhibit C, J. A. O., referred to in deposition of William J. Porter	56	31

	Original.	Print.
Exhibit D, J. A. O., referred to in deposition of William J. Porter	57	31
Exhibit E, J. A. O., referred to in deposition of William J. Porter	57	32
Exhibit F, J. A. O., referred to in deposition of William J. Porter	58	32
Exhibit G, J. A. O., referred to in deposition of William J. Porter	59	33
Exhibit H, J. A. O., referred to in deposition of William J. Porter	60	34
Exhibit J, J. A. O., referred to in deposition of William J. Porter	61	34
Exhibit K, J. A. O., referred to in deposition of William J. Porter	62	35
Exhibit N, referred to by Thomas Smith	340	188
Exhibit O, referred to by S. F. Shortland	340	189
Exhibit P, referred to by Thomas M. Campbell	341	189
Exhibit Q, referred to by A. M. Underhill	341	189
Exhibit R, referred to by R. A. Williams	341	189
Exhibit S, referred to by Hamilton Yale	349	194
Exhibit T, referred to by Hamilton Yale	350	194
Deposition of H. W. Farley	63, 137	35, 76
Robert R. N. Keaghey	67	37
F. M. Roby	73	40
C. A. Janvier	80	44
A. McIntosh	86	47
P. J. McGrath	86	48
I. H. Bradfute	94	52
H. P. Davis	98	54
P. Ryan	103	57
P. McConnon	107	59
E. P. Ranshide	118	65
A. E. Bignon	119	65
Henry C. Miller	126	69
Charles Clarborne	127	70
Exhibit A, referred to by H. W. Farley	132	73
Exhibit B, referred to by Farley, Roby, Janvier, McGrath, Bignon, and Clarborne	133	73
Exhibit C, referred to by Bignon, Clarborne, Janvier, and McGrath	134	73
Exhibit D, referred to by Farley, Bradfute, and Bignon	135	74
Exhibits E and EE, referred to by Farley	137, 138	76
Exhibit F, referred to by Keaghay, Roby, and Clarborne	138	77
Exhibit G, referred to by Janvier, Clarborne; also, by Clarborne as Exhibit *a*	143	79
Exhibit H, referred to by Janvier, Clarborne, and also by Clarborne as Exhibit *b*	143	80
Exhibits *c*, *d*, *e*, *f*, *g*, *h*, *i*, *j*, *k*, *l*, referred to by Clarborne	140–150	77–84
Exhibit J, referred to by Bignon	151	84
Exhibits K and K^2 and L, referred to by Davis, Bignon, and McGrath	152, 153	85, 86
Exhibit OO^2, referred to by Miller	154	86
Exhibits V, W, X, Y, Z, referred to by Clarborne	154–219	87–123
Deposition of Patrick McAdam	223	125
George Dearden	229	128
Richard Dwerryhouse	233	130
Joseph Thorburn	238	133
Martin Galvin	245	136
Henry Evison	251	139
George Lyon	257	142
Exhibits A, B, C, D, E, F, G, referred to by Lyon	260–271	144–152
Thomas M. Smith recalled	272	152
Deposition of Samuel Smith	272	153
Deposition of William Jolly	277	155
Exhibits H to K, inclusive, introduced as evidence	281–292	157–163
EVIDENCE FOR LIBELLANT.		
Exhibit [illegible], introduced as evidence	312	175

	Original.	Print.
Exhibit 2, introduced as evidence	314	176
Exhibit 3, introduced as evidence	315	176
Adolphus C. Schaefer sworn	293	164
EVIDENCE FOR CLAIMANTS.		
Deposition of Francis H. Grain	297	166
Deposition of John B. Kitching	300	168
Exhibits 7 and 8, referred to by Kitching	318	177
EVIDENCE FOR LIBELLANT.		
Deposition of Adolphus C. Schaeffer	305	171
Deposition of Edgar S. Blackwell	307	172
Exhibit 4, referred to by Schaeffer	315	176
Decree of district court	351	194
Notice of appeal to circuit court	352	195
Petition of appeal to circuit court	352	195
Bond for costs and damages	354	196
Decision of Barons Martin, Channell, and Cleasby, introduced as evidence in circuit court	357	197
Minutes of circuit court	376	202
Opinion of Justice Hunt	377	202
Decree of circuit court	393	206
Petition of appeal to Supreme Court	397	207
Bond for damages and costs on appeal	403	208
Citation	404	209
Certificate of clerk of United States circuit court	406	210
Agreement of counsel and order amending decree	407	210

1 U. S. district court for the eastern district of New York.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn on the 9th day of June, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the honorable Charles L. Benedict, district judge.

HENRY HENTZ ET AL.
vs.
THE STEAMSHIP IDAHO, HER TACKLE, &C.

The libellants appear and file their libel against the above-named steamship, her tackle, &c., in the words and figures following, to wit:

In admiralty.

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The libel of Henry Hentz, of the city of Brooklyn, county of
2 Kings, State of New York, and Leonard Spangenberg, jr., of the county of Westchester, in the State aforesaid, merchants, trading and doing business as partners in the city of New York, under the firm-name and style of H. Hentz and Company, against the steamship Idaho of Liverpool, England, in the United Kingdom of Great Britain and Ireland, (of which steamship Idaho Robert C. Cutting now is or lately was master, and Messrs. Williams and Guion now are or were agents in the port of New York, and Messrs. Guion & Company now are or were agents in the port of Liverpool,) her boats, engines, tackle, apparel, sails, furniture, and other appurtenances, in a case of lien, civil and maritime, respectfully sheweth:

First. That on or about the fourth day of May, one thousand eight hundred and sixty-nine, Thomas W. Mann, merchant, of the city of New York, shipped in good order and condition in and upon said steamship Idaho, whereof the said Cutting was master and the said Williams and Guion were agents, for the voyage she was then about to make from the port of New York to the port of Liverpool, and then lying in the port of New York, bound for Liverpool, two hundred bales of cotton, marked and numbered as in the margin of the bill of lading then and there affirmed, that is to say, ship's mark "O—S. A. L., 120 V. O. X., 80," to be delivered in the like good order and condition at the aforesaid port of Liverpool, as per said bill of lading, a copy of which is hereto annexed, marked "Exhibit A," unto order or to assigns, freight for the said goods to be paid immediately on landing, without any allowance of credit or discount, at the rate of five shilling sterling per bale, gross weight, delivered, with primage and average accustomed; of all which your libellants are informed by one of the bills of lading of the above tenor and date thereupon executed, and believe to be true.

Second. That on the said fourth day of May, one thousand eight hun-
3 dred and sixty-nine, the agents of said steamship in the port of New York, Messrs. Williams & Guion, affirmed to three bills of lading of the above tenor and date, one of which being accomplished, the others to stand void.

Third. That the said cotton was, as your libellants are informed and believe, on or about the said 4th day of May, in the year one thousand

eight hundred and sixty-nine, actually received on board the said steamship Idaho, and that the said steamship sailed from the said port of New York, and arrived on or before the eighteenth day of May, one thousand eight hundred and sixty-nine, in the said port of Liverpool, with the said cotton on board, having earned the freight thereon.

Fourth. That on or about the said fourth day of May, one thousand eight hundred and sixty-nine, your libellants purchased the said two hundred bales of cotton, shipped by the said Thomas W. Mann as aforesaid, for the sum of twenty-five thousand three hundred and fifty and $\frac{42}{100}$ dollars, upon the strength of one of the said bills of lading so affirmed to, which was presented to your libellants at the time of said purchase, and that on the said 4th day of May, in the year one thousand eight hundred and sixty-nine, or thereabouts, the said bills of lading, so affirmed as aforesaid, were duly indorsed by the said Thomas W. Mann in blank, and thereafter the said bills of lading so indorsed was delivered to your libellants.

Fifth. That your libellants are bona-fide assignees and holders of said bills of lading for a valuable consideration, as they are advised and believe, having paid the said sum of twenty-five thousand three hundred and fifty and $\frac{42}{100}$ dollars upon the faith of said purchase and delivery of said bill of lading, without notice of any prior or other sale or assignment, or of any lien or claim of any kind or description whatever upon the said cotton.

Sixth. That after the arrival of the said steamship Idaho in the
4 port of Liverpool, and on the eighteenth day of May, in the year last above mentioned, your libellants, by their agents, Messrs. James Finlay & Company, went to said steamship, and upon enquiry for the master or agents of said steamship in Liverpool, and on finding the said agents, demanded of them the said two hundred bales of cotton, but they refused to deliver the same or any part thereof, except thirty-five bales marked as follows: Twenty-one bales marked "S. A. L.," and fourteen bales marked "V. O. X.," which were received by your libellants, by their agents, and the freight and charges paid thereon; and they have ever since so refused.

Seventh. That your libellants are still the lawful owners and holders of said bill of lading, and that neither of the same have been assigned or delivered to any other person or persons than your libellants.

Eighth. That the loss and damage caused to your libellants by the said refusal to deliver the remaining portion of said two hundred bales of cotton, to wit, one hundred and sixty-five bales, and the non-delivery thereof to your libellants, has been the sum of twenty-five thousand dollars, and the interest, commission, and charges thereon.

To the end, therefore, that by the decree of this honorable court your libellants may obtain relief in the premises, they pray process of attachment against the said steamship Idaho, her tackle, engines, sails, apparel, furniture, boats, and other appurtenances, and monition or publication as is usual in like cases.

And your libellants pray that by the decree of this honorable court the said steamship Idaho, with her tackle, engines, sails, apparel, furniture, boats, and other appurtenances, may be condemned and sold for the payment of the claim of your libellants, and that they may have such other and further relief as the nature of this case may require.

And your libellants will ever pray, &c.

H. HENTZ.

HAMMOND & POMEROY,
Proctors and Advocates.

5 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

On the 9th day of June, A. D. 1869, before me personally appeared the above-named Henry Hentz, who, being by me duly sworn, deposed and said that he had read the above libel and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, that he believes it to be true.

SAMUEL T. JONES,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

HENRY HENTZ, of the city of Brooklyn, in the eastern district of New York, being duly sworn, says that the steamship Idaho, in the above libel mentioned, is now lying at the port of New York, and within the jurisdiction of the United States court for the eastern district of New York.

H. HENTZ.

Subscribed and sworn to before me this 9th day of June, 1869.
SAMUEL T. JONES,
U. S. Commissioner.

District court of the United States for the eastern district of New York.

Stipulation for libellants' costs entered into pursuant to the rules and practice of this court.—Filed the 9th day of June, 1869.

Whereas a libel was filed in this court on the 9th day of June,
6 in the year of our Lord one thousand eight hundred and sixty-nine, by Henry Hentz and Leonard Spangenberg, jr., against the ship Idaho, her engines, &c., for the reasons and causes in the said libel mentioned, and praying that said ship may be condemned, &c.; and the said libellants and A. C. Schaefer, the surety, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall appear and answer in the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

H. HENTZ.
L. SPANGENBERG, JR.,
Per H. HENTZ.
ADOLPHUS C. SCHAEFER.

Taken and acknowledged this 9th day of June, 1869, before me.
SAMUEL T. JONES,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

A. C. SCHAEFER, one of the parties to the above stipulation, being duly sworn, doth depose and say that he resides in the city of Brooklyn, (92 Gates avenue,) and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

ADOLPHUS C. SCHAEFER.

Sworn to this 9th day of June, 1869, before me.

SAMUEL T. JONES,
U. S. Commissioner.

7 EASTERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America, to the marshal of the eastern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the eastern district of New York, on the 9th day of June, in the year of our Lord one thousand eight hundred and sixty-nine, by Henry Hentz and Leonard Spangenberg, jr., merchants, &c., against the steamship Idaho, her boats, engines, tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamship or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and, all proceedings being had, that the said steamship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the eastern district of New York on the 23d day of June, 1869, at twelve o'clock noon of the same day, if the same shall be a day of jurisdiction, otherwise, on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the honorable Charles L. Benedict, judge of the said court, at the city of Brooklyn, in the eastern district of New York, this
8 9th day of June, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-third.

SAMUEL T. JONES, *Clerk.*

HAMMOND & POMEROY,
Proctors for Libellant.

In obedience to the within monition I attached the steamship Idaho, her tackle, &c., therein described, on the 9th day of June, 1869, and have *not* given due notice to all persons claiming the same that this court will on the 23d day of June, 1869, inst., at 12 o'clock noon (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

FRANCIS S. DALLON,
U. S. Marshal.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on Saturday, the 12th day of June, in the year of our Lord one thousand eight hundred and sixty-nine.

Present, the honorable Charles L. Benedict, district judge.

THE STEAMSHIP IDAHO, HER ENGINES, tackle, &c., The Liverpool and Great Western Steam Company, claimants,
ads.
HENRY HENTZ AND LEONARD SPANGENBERG, jr.
} Vol. , Page .

9 And now come John S. Williams and William H. Guion, intervening, as agents, for the interest of the Liverpool and Great Western Steam Company, in the said proceedings, appears before the honorable court and makes claim to the said steamship, &c., as the same are attached by the marshal, under process of this court, at the instance of Henry Hentz and Leonard Spangenberg, jr.; and the said John S. Williams and William H. Guion aver that they were in possession of the said steamship at the time of the attachment thereof, and that the company above named are the true and bona-fide owners of the said steamship, and that no other person is the owner thereof; and the said agents are the true and lawful bailees thereof, as above set forth; wherefore, they pray to defend accordingly.

THE LIVERPOOL & GREAT WESTERN STEAM CO.,
WM. H. GUION, *Agent.*

OWEN, NASH & GREY,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

WM. H. GUION, being duly sworn, says that he resides in the city of New York; that he is one of the agents of the Liverpool and Great Western Steam Co., the above-named owners; that the owners of said steamship reside in England; and that this deponent is duly authorized to put in this claim in behalf of the owner of the said steamship; and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters he believes it to be true.

WM. H. GUION.

Sworn to and subscribed this 12th day of June, A. D. 1869, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

10 United States district court, eastern district of New York. In admiralty.

HENRY HENTZ AND LEONARD SPANGENBERG, jr.,
against
THE STEAMSHIP IDAHO, HER ENGINES, tackle, &c.

We hereby stipulate and consent that for the purposes of this action the value of said steamship Idaho shall be the sum of thirty

thousand dollars, and do further stipulate and consent that the stipulation usual in the premises shall be for the said sum of thirty thousand dollars, and two hundred and fifty dollars costs, the defendants paying fees of marshal to date required by him to release the said steamer.

June 11, 1869.

HAMMOND & POMEROY,
Libellants' Proctors.

Filed June 12, 1869.

District court of the United States for the eastern district of New York.

Stipulation entered into pursuant to the rules and practice of this court.—Filed the 12th day of June, 1869.

Whereas a libel was filed in this court on the 9th day of June, in the year of our Lord one thousand eight hundred and sixty-nine, by Henry Hentz and Leonard Spangenberg, jr., against the steamship Idaho,
11 her engines, &c., for the reasons and causes in the said libel mentioned, and praying that said steamship, her engines, &c., may be condemned and sold, &c., and the parties hereto hereby consenting that, in case of default or contumacy on the part of the claimants or their surety, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands.

And whereas, also, a claim has been filed in said cause by the agent of the Liverpool and Great Western Steam Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or, upon an appeal, by the appellate court.

THE LIVERPOOL & GREAT WESTERN STEAM CO.,
WM. H. GUION, *Agent.*
WM. H. GUION.

Taken and acknowledged this 12th day of June, 1869.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Wm. H. Guion, party to the above stipulation, being duly sworn, doth depose and say that he resides in the southern district of New York; that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

WM. H. GUION.

Sworn to this 12th day of June, 1869, before me.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

12 District court of the United States for the eastern district of New York. In admiralty.

Stipulation for value, entered into pursuant to the rules and practice of this court.—Filed 12th day of June, 1869.

Whereas a libel was filed on the 9th day of June, in the year of our Lord one thousand eight hundred and sixty-nine, by Henry Hentz and

Leonard Spangenberg, jr., against the steamship Idaho, her engines, &c., for the reasons and causes in the said libel mentioned; and whereas the said steamship, her engines, &c., in the custody of the marshal, under the process issued in pursuance of the prayer of said libel; and whereas it has been consented by the proctors for the libellants that said steamship, &c., be released from custody on claimant's filing claim and executing stipulation for costs, and value the latter at thirty thousand dollars, as appears from said consent, now on file in said court; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the part of the claimants, or their sureties, execution for the above-agreed value, with interest thereon from this date, may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the stipulator undersigned shall, at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to Owen, Nash & Gray, esquires, proctors for the claimants of said steamship Idaho, &c., abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if
13 any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

THE LIVERPOOL & G. W. STEAM CO.,
WM. H. GUION, *Agent.*
FRANCIS H. GRAIN.
WM. H. GUION.

Taken and acknowledged this 12th day of June, 1869, before me.
EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis H. Grain and William H. Guion, parties to the above stipulation, being duly sworn, depose and say, and each for himself says, that he is worth the sum of sixty thousand dollars over and above all his just debts and liabilities.

FRANCIS H. GRAIN.
WM. H. GUION.

Sworn to this 12th day of June, 1869, before me.
EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

The within bond with the Liverpool and Great Western Steamship Company as principals, and Francis H. Grain and John S. Williams or William H. Guion, as sureties, is approved.
June 12th, 1869.

HAMMOND & POMEROY,
Proctors for Libellants.

14 United States district court.

Notice to the marshal.

HENRY HENTZ ET AL.
vs.
THE S. S. IDAHO, &C.

SIR: The above-named vessel having been bonded and the costs of

the clerk having been paid, you will discharge the said vessel from your custody on payment of your fees.

Dated June 12th, 1869.

Yours, &c.,

SAMUEL T. JONES,
Clerk.

To F. L. DALLON, Esq.,
United States Marshal.

To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York.

The answer of the Liverpool and Great Western Steam Company, claimants, to the libel and complaint of Henry Hentz and Leonard Spangenberg, jr., against the steamship Idaho, her boats, engines, boilers, tackle, apparel, &c., in a case of lien, civil and maritime, respectfully shows—

First. That it is true, and these claimants accordingly admit, that on or about the fourth day of May, 1869, two hundred bales of cotton were shipped on board the steamer Idaho, then in the port of New York and bound for Liverpool; that said cotton was apparently in good order and condition, and marked as in the libel alleged, and that there-
15 upon a bill of lading was duly signed, of which the paper annexed to the libel is believed to be a copy, but for greater certainty reference is made to the original; that said cotton purported to be shipped by Thomas W. Mann, in the libel mentioned, and that the agents of said vessel affirmed to three bills of lading of the same tenor, one of which being accomplished, the others to stand void.

Second. These claimants further say that shortly thereafter, and before the said vessel set sail, to wit, on the said fourth day of May, 1869, one William J. Porter, without the procurement or knowledge of the claimants, their master, or agents, commenced an action in the supreme court of the State of New York against Robert C. Cutting, the master of the said steamship Idaho, by summons duly served upon him according to the practice of the said court, to recover the possession of one hundred and sixty-five of the said bales of cotton, and at the same time delivered to the sheriff of the city and county of New York an affidavit made by one Robert H. Brown in behalf of said William J. Porter, showing that the said Porter, as plaintiff in said action, was lawfully entitled to the possession of the said one hundred and sixty-five bales of cotton by virtue of a special property therein, the facts in respect to which were fully set forth in said affidavit; and that the said one hundred and sixty-five bales were wrongfully detained by the said Cutting, master of the said vessel, and the alleged cause of the detention thereof, and that the same had not been taken for a tax assessment or fine pursuant to a statute, or seized under an execution or attachment against the property of said plaintiff, and the actual value of said property. That the said Porter, plaintiff in said action, by an endorsement in writing on said affidavit, required the said sheriff of the city and county of New York, within which city and county the said property then was, to take the said one hundred and sixty-five bales of cotton from the said Cutting, defendant in said action, and deliver it to the said Porter, plaintiff therein, and with said affidavit and notice delivered to
16 the said sheriff a written undertaking, with two sufficient sureties, approved by the said sheriff, to the effect that they were bound in double the value of the property, as stated in the said affidavit,

for the prosecution of the said action for the return of the property to the defendant therein, if return thereof should be adjudged, and for the payment to him of such sum as might for any cause be recovered against the said plaintiff. That such proceedings were in all respects according to the form of the statute in such cases made and provided, to wit, of sections 206, 207, 208, and 209 of the code of procedure of the State of New York, and by reason thereof it became the duty of the said sheriff to take, and he thereupon did take, from the defendant in the said action, to wit, the said Cutting, master of the said Idaho, the said one hundred and sixty-five bales of cotton, under such process and by virtue of his office as sheriff aforesaid, and the said Cutting had no power to, and could not legally, oppose the said taking, but immediately thereafter, and before the said cotton had been delivered by the said sheriff to the plaintiff in said action, the said Cutting, to wit, the Liverpool & Great Western Steam Co., the claimants herein, as owners of the said steamship Idaho, by reason of their special property in said cotton as bailees and carriers thereof, for the holder of the bill of lading mentioned in the libel, according to the form of the statute in such case made and provided, to wit, of section 216 of the said code of procedure, made affidavit of such title and owership and right to the possession of said cotton, stating the grounds of such right and title, and served the said affidavit on the said sheriff with a claim of the said property; that thereupon the said sheriff, according to the provisions of said statute, before the delivery to the plaintiff of the said one hundred and sixty-five bales of cotton, required of him, the said plaintiff, that he should, and he thereupon did, indemnify the said sheriff against said claim by an undertaking executed by two sufficient sureties, accompanied by their affidavits that they were each worth
17 double the value of the property as specified in the affidavit of the plaintiff, the freeholders and householders of the county, and that thereupon the said sheriff, as he was required by law to do, delivered the said one hundred and sixty-five bales of cotton to the said Porter, the plaintiff in the said action, and neither the said Cutting nor these claimants could make any further resistance thereto.

Third. That the said William J. Porter, plaintiff in said action, after such taking and delivery to him by the said sheriff of the said property, employed and directed these claimants, as owners of said steamship Idaho, to take the said cotton to Liverpool, whither the said vessel was bound, for him, the said Porter, which these claimants, under such employment and direction and not otherwise, proceeded to do, and they deny the allegations in the first and second articles of the libel in anywise to the contrary.

Fourth. That on the arrival of said vessel at Liverpool, James Finley & Company, of Liverpool, claiming to hold one of the said bills of lading in the libel mentioned, did demand of the agents of the said vessel the two hundred bales of cotton in the said bill described, as in the sixth article of the said libel mentioned, and thereupon thirty-five bales thereof, being all that had not been taken by said sheriff, were delivered in pursuance of said demand, and notice was given that the residue, to wit, one hundred and sixty-five bales, had been taken by the sheriff of the city and county of New York, by legal process, at the suit of said Wm. J. Porter, as above mentioned, and delivered by the said sheriff to the said Porter, and that the action under which the said property had been taken was pending and undetermined in the supreme court of the State of New York. That notwithstanding the said notice

of the taking of said cotton by the sheriff of the city and county of New York, the said James Finley & Company, of Liverpool, brought an action on behalf of the libellants herein against these claimants in Liverpool, in a court of competent jurisdiction, to recover damages for the non-delivery of the said one hundred and sixty-five bales of cotton, which action is still pending and undetermined.

18 Fifth. That after the return of the said steamship Idaho to the port of New York, the libellants, well knowing that the said cotton had been seized and taken as aforesaid by the said sheriff, filed the libel herein, and that the non-delivery of the said one hundred and sixty-five bales of cotton alleged in said libel is the same non-delivery for which the said action in Liverpool was brought as aforesaid. That after the filing of the libel herein the libellants presented their petition, dated the 24th July, 1869, to the supreme court of the State of New York, alleging the taking of the said cotton by the said sheriff in the action brought by the said William J. Porter against the said Robert C. Cutting, as master of the said steamer Idaho, as above stated, and that they, the said libellants, desired to litigate the question of their title to the said cotton against the said Porter directly with him, and thereby applied for an order that they might be made parties defendants in the said action; that said petition was granted by the said supreme court, and that thereupon the said Porter, plaintiff in the said action, by his amended complaint, made on the 20th September, 1869, joined the libellants herein as defendants with the said Cutting in the said action, whereby, according to the course and practice of the said supreme court and the statute in such case made and provided, in case the said Porter, as plaintiff in said action, shall fail to establish and maintain his title to said cotton as against the claim of the libellants herein, they will be entitled to judgment for a return thereof, with damages, and to the benefit of the undertaking given by the plaintiff in said action as aforesaid, by way of securing such return and damages, and of indemnity to the said sheriff for the taking of such cotton.

Sixth. These claimants have no knowledge whether the libellants purchased the two hundred bales of cotton described in the said bill of lading, upon the strength of one of the said bills of lading or otherwise, or whether the same was indorsed by the said Thomas W. Mann,

19 in blank or otherwise, and delivered to the libellants, as averred in the fourth article of the said libel, and do not admit the same.

Seventh. These claimants have no knowledge whether the libellants are bona-fide holders and assignees of said bill of lading for a valuable consideration or otherwise, as alleged in the fifth article of said libel, or whether they have paid the sum therein stated, or any other sum, in the faith of the alleged purchase and delivery of said bill of lading, without notice, as in said fifth article averred, of any prior or other sale, assignment, lien, or claim, and do not admit the same.

Eighth. These claimants have no knowledge as to the amount of damages alleged to have been sustained by the libellants, as in the eighth article alleged.

Ninth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore, the claimants pray that this honorable court will be pleased

to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

LIVERPOOL & GREAT WESTERN STEAM CO,
By JOHN S. WILLIAMS.

Subscribed and sworn to before me this 19th day of January, 1870.

EDWARD L. OWEN,
U. S. Commissioner.

OWEN, NASH & GREY,
Claimants' Proctors.

Filed January 20th, 1870.

20 To the honorable Charles L. Benedict, judge of the district court of the United States for the eastern district of New York:

The answer of the Liverpool and Great Western Steam Company, claimants, to the libel and complaint of Henry Hentz and Leonard Spangenberg, jr., against the steamship Idaho, her boats, engines, boilers, tackle, apparel, &c., in a case of lien, civil and maritime, respectfully shows:

First. That it is true, and these claimants accordingly admit, that on or about the fourth day of May, 1869, two hundred bales of cotton were shipped on board the steamer Idaho, then in the port of New York and bound for Liverpool; that said cotton was apparently in good order and condition and marked as in the libel alleged, and that therefor a bill of lading was duly signed, of which the paper annexed to the libel is believed to be a copy, but for greater certainty reference is made to the original; that said cotton purported to be shipped by Thomas W. Mann, in the libel mentioned, and that the agents of said vessel affirmed to three bills of lading of the same tenor, one of which being accomplished, the others to stand void.

Second. These claimants further say that shortly thereafter, and before the said vessel set sail, to wit, on the said fourth day of May, 1869, one William J. Porter, without the procurement or knowledge of the claimants, their master or agents, commenced an action in the supreme court of the State of New York against Robert C. Cutting, the master of the said steamship Idaho, by summons duly served upon him according to the practice of the said court, to recover the possession of one hundred and sixty-five of the said bales of cotton, and at the same time delivered to the sheriff of the city and county of New York an affidavit made by one Robert H. Brown in behalf of said William J. Porter, showing that the said Porter, as plaintiff in said action, was lawfully entitled to the possession of the said one hundred and sixty-five bales of cotton, by
21 virtue of a special property therein, the facts in respect to which were fully set forth in said affidavit; and that the said one hundred and sixty-five bales were wrongfully detained by the said Cutting, master of the said vessel, and the alleged cause of the detention thereof, and that the same had not been taken for a tax assessment or fine pursuant to a statute, or seized under an execution or attachment against the property of said plaintiff, and the actual value of said property. That the said Porter, plaintiff in said action, by an endorsement in writing on said affidavit, required the said sheriff of the city and county of New York, within which city and county the said property then was, to take the said one hundred and sixty-five bales of cotton from the said Cutting, defendant in said action, and deliver it to the said Porter, plaintiff therein, and, with said affidavit and notice, delivered to the said

sheriff a written undertaking, with two sufficient sureties, approved by the said sheriff, to the effect that they were bound in double the value of the property, as stated in the said affidavit, for the prosecution of the said action for the return of the said property to the defendant therein, if return thereof should be adjudged, and for the payment to him of such sum as might for any cause be recovered against the said plaintiff. That such proceedings were in all respects according to the form of the statute in such case made and provided, to wit, of sections 206, 207, 208, and 209 of the Code of Procedure of the State of New York, and by reason thereof it became the duty of the said sheriff to take, and he thereupon did take, from the defendant in the said action, to wit, the said Cutting, master of the said Idaho, the said one hundred and sixty-five bales of cotton under such process, by virtue of his office as sheriff as aforesaid, and the said Cutting had no power to, and could not legally, oppose the said taking; but immediately thereafter, and before the said cotton had been delivered by the said sheriff to the plaintiff in said action, the said Cutting, to wit, the Liverpool & Great Western Steam Co., the claimants herein, as owners of the said steamship Idaho, by
22 reason of their special property in said cotton as bailees and carriers thereof, for the holder of the bill of lading mentioned in the libel, according to the form of the statute in such case made and provided, to wit, of section 216 of the said Code of Procedure, made affidavit of such title and ownership and right to the possession of said cotton, stating the grounds of such right and title, and served the said affidavit on the said sheriff with a claim of the said property; that thereupon the said sheriff, according to the provisions of said statute, before the delivery to the plaintiff of the said one hundred and sixty-five bales of cotton, required of him, the said plaintiff, that he should, and he thereupon did, indemnify the said sheriff against said claim by an undertaking executed by two sufficient sureties, accompanied by their affidavits that they were each worth double the value of the property, as specified in the affidavit of the plaintiff, and freeholders and householders of the county, and that thereupon the said sheriff, as he was required by law to do, delivered the said one hundred and sixty-five bales of cotton to the said Porter, the plaintiff in the said action, and neither the said Cutting nor these claimants could make any further resistance thereto.

Third. That the said William J. Porter, plaintiff in said action, after such taking and delivery to him by the said sheriff of the said property, employed and directed these claimants, as owners of said steamship Idaho, to take the said cotton to Liverpool, whither the said vessel was bound, for him, the said Porter, which these claimants, under such employment and direction and not otherwise, proceeded to do, and they deny the allegations in the first and second articles of the libel in anywise to the contrary.

Fourth. That on the arrival of said vessel at Liverpool, James Finlay & Company, of Liverpool, claiming to hold one of the said bills of lading in the libel mentioned, did demand of the agents of the said vessel the two hundred bales of cotton in the said bill described, as in the sixth article of the said libel mentioned, and thereupon thirty-five
23 bales thereof, being all that had not been taken by said sheriff, were delivered in pursuance of said demand, and notice was given that the residue, to wit, one hundred and sixty-five bales, had been taken by the sheriff of the city and county of New York, by legal process, at the suit of said Wm. J. Porter, as above mentioned, and delivered by the said sheriff to the said Porter, and that the action under

which the said property had been taken was pending and undetermined in the supreme court of the State of New York; that notwithstanding the said notice of the taking of said cotton by the sheriff of the city and county of New York, the said James Finlay & Company, of Liverpool, brought an action on behalf of the libellants herein against these claimants in Liverpool, in a court of competent jurisdiction, to recover damages for the non-delivery of the said one hundred and sixty-five bales of cotton, which action is still pending and undetermined.

Fifth. That after the return of said steamship Idaho to the port of New York, the libellants, well knowing that the said cotton had been seized and taken as aforesaid by the said sheriff, filed the libel herein, and that the non-delivery of the said one hundred and sixty-five bales of cotton alleged in said libel is the same non-delivery for which the said action in Liverpool was brought as aforesaid; that after the filing of the libel herein the libellants presented their petition, dated the 24th July, 1869, to the supreme court of the State of New York, alleging the taking of the said cotton by the said sheriff in the action brought by the said Wm. J. Porter against the said Robert C. Cutting, as master of the said steamer Idaho, as above stated, and that they, the said libellants, desired to litigate the question of their title to the said cotton against the said Porter directly with him, and thereby applied for an order that they might be made parties defendants in the said action; that said petition was granted by the said supreme court, and that thereupon the said Porter, plaintiff in
24 the said action, by his amended complaint, made on the 20th September, 1869, joined the libellants herein as defendants with the said Cutting in the said action, whereby, according to the course and practice of the said supreme court and the statute in such case made and provided, in case the said Porter, as plaintiff in said action, shall fail to establish and maintain his title to said cotton as against the claim of the libellants herein, they will be entitled to judgment for a return thereof, with damages, and to the benefit of the undertaking given by the plaintiff in said action as aforesaid, by way of securing such return and damages, and of indemnity to the said sheriff for the taking of said cotton.

Sixth. These claimants have no knowledge whether the libellants purchased the two hundred bales of cotton described in the said bill of lading upon the strength of one of the said bills of lading, or otherwise, or whether the same was indorsed by the said Thomas W. Mann, in blank or otherwise, and delivered to the libellants, as averred in the fourth article of the said libel, and do not admit the same.

Seventh. These claimants have no knowledge whether the libellants are bona-fide holders and assignees of said bill of lading for a valuable consideration, or otherwise, as alleged in the fifth article of the said libel, or whether they have paid the sum therein stated, or any other sum, on the faith of the alleged purchase and delivery of said bill of lading without notice, as in said fifth article averred, of any prior or other sale, assignment, lien, or claim, and do not admit the same.

Eighth. These claimants aver, on their information and belief, that at the time of the taking of the said one hundred and sixty-five bales of cotton by the said sheriff, as aforesaid, and at the time of the delivery thereof to the said Porter by the said sheriff as aforesaid, and at the time of the claimants' refusal to deliver the same to the libellants at Liverpool, alleged in the libel herein, the said libel-
25 lants had no right, title, or interest therein, nor any right

to the possession thereof, but that the said Wm. J. Porter was the true and lawful owner thereof, and entitled to the immediate possession thereof; and they deny that the said Thos. W. Mann, named in the libel herein, ever had any right or title in or to said one hundred and sixty-five bales; and as to one hundred and forty of said one hundred and sixty-five bales, claimants further aver that one John C. Forbes, being the owner thereof, shipped the same at New Orleans on or about the first day of April, 1869, on the brig C. C. Colson, then lying in said port of New Orleans, bound for the port of Liverpool, whereof one Julius A. Pratt was then master; and the said master signed and delivered to the said Forbes bills of lading therefor in the usual form of such instruments, whereby the said cotton was made deliverable to the said Forbes' order, and the said Forbes drew against one of said bills of lading for one hundred and thirty-nine of said one hundred and forty bales his three certain drafts, dated April 1st, and April 3d, 1869, upon the said Porter, under the name of William J. Porter & Co., for the several sums of $6,243.27, $5,000 and $4,000, all payable to said Forbes' own order at sight, and the said Forbes thereupon indorsed the said drafts and bill of lading, and delivered the same to one Waddy Thompson at New Orleans; that the said Waddy Thompson, having possession of said bill of lading and drafts, thereupon advised the said Porter of said shipment, and of the drawing of said drafts against the same, and the said drafts with said bill of lading for one hundred and thirty-nine bales annexed thereto, were afterwards presented to said Porter at New York by the holder and indorser thereof, and the said Porter, on the strength and security of said bill of lading, and on or about the 7th day of April, 1869, paid and took up said drafts, and became and ever since has been the holder of said bill of lading, and advanced upon the credit and security therefor the amount of said drafts.

That said Porter is also the holder of another bill of lading for
26 one bale of cotton by the same vessel, being one of the bills of lading taken therefor by said Forbes as aforesaid.

Ninth. These claimants deny, on their information and belief, all the averments of said libel as to damages alleged to have been sustained by the libellants, and they deny that the libellants sustained any loss or damage by the alleged refusal of the claimants, their servants or agents, to deliver the said one hundred and sixty-five bales of cotton to the said libellants, as alleged in said libel.

Tenth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the claimants pray that this honorable court will be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

LIVERPOOL & GREAT WESTERN STEAM CO., LIMITED.
JOHN S. WILLIAMS.

Subscribed and sworn to before me this 26th day of September, 1870.
EDWARD L. OWEN,
U. S. Commissioner.

Filed September 30, 1870.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-

rooms, in the city of Brooklyn, on the 14th day of February, in the year of our Lord one thousand eight hundred and seventy-one—

Present, the honorable Charles L Benedict, district judge.

27 HENRY HENTZ ET AL.
v.
THE STEAMSHIP IDAHO, HER TACKLE, &C.

Cause called. Hearing ordered.

Messrs. Hammond & Pomeroy & Judge Emott appear for libellants.

Messrs. Owen, Nash & Gray, & Wm. G. Choate, appear for claimants.

Pleadings read.

Evidence for libellants:

Henry Hentz sworn and examined.

Bill of lading put in evidence.

Libellants rest.

Evidence for claimants:

Thomas M. Smith sworn and examined.

Hearing suspended until February 15th, 1871.

February 15th, 1871.—Hearing resumed.

Thomas M. Smith recalled and examined.

Stephen F. Shortland sworn and examined.

Thomas M. Campbell sworn and examined.

Hearing suspended until February 16th, 1871.

February 16th, 1871.—Hearing resumed.

Wm. H. Guion sworn and examined.

Wm. R. Allen sworn and examined.

Richard A. Williams sworn and examined.

Albert L. Conklin sworn and examined.

Peter Corcoran sworn and examined.

Andrew M. Underhill sworn and examined.

Hamilton Yale sworn and examined.

28 Deposition of W. J. Porter read.

Deposition of H. W. Farley read.

Deposition of Robert H. M. Keaghey.

Deposition of F. M. Roby.

Deposition of Charles A. Janborn.

Hearing suspended until February 17th, 1871.

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 17th day of February, in the year of our Lord one thousand eight hundred and seventy-one—

Present, the honorable Charles L. Benedict, district judge.

HENRY HENTZ ET AL.
vs.
THE STEAMSHIP IDAHO, HER TACKLE, &C.

Hearing resumed.

Angus McIntosh affirmed and examined.

Deposition of Philip McGrath read.

Deposition of H. Bradfute.

Deposition of Henry P. Davis.

Deposition of Patrick Ryan.

Deposition of Patrick McConnon.
Deposition of John Smith.
Deposition of E. P. Ranshide.
Deposition of A. E. Bignon.
Deposition of Henry C. Miller.
29 Deposition of A. D. Bermondy.
Deposition of Patrick McAdam.
Deposition of R. Dwerryhouse.
Deposition of Joseph Thorburn.
Deposition of Martin Galvin.
Thomas M. Smith recalled and examined.
Deposition of Samuel Smith read.
Deposition of William Jolly.
Hearing suspended.
March 17th, 1871.—Hearing resumed.
Evidence for libellants:
Bill of lading, dated May 4, 1869, (Exh. 1 and Exh. H,) put in evidence.
Note of H. Hentz & Co., dated May 3, 1869, (Exh. 3,) put in evidence.
Original bill of sale, dated May 3, 1869, (Exh. 5,) put in evidence.
A. C. Schaefer sworn and examined.
Edgar S. Blackwell sworn and examined.
Testimony closed, except as to witnesses, as by reference to minutes of testimony will appear. Cause summed up by the respective counsel, and submitted upon briefs to be furnished.

United States district court, eastern district of New York.

HENRY HENTZ
vs.
THE STEAMSHIP IDAHO.

Before Judge C. L. Benedict.

30 FEBRUARY 14TH, 1871.

For the libellant, James Emott.
For the claimant, Wm. G. Choate & S. P. Nash.

HENRY HENTZ, being called and sworn, says:

I am one of the libellants, member of the firm of H. Hentz & Co.; myself and H. Spangenberg, jr., comprised that firm in 1869. In May, 1869, our firm bought cotton of Thomas Mann; 3d of May, 200 bales of cotton, marked S. A. L., 120 bales, V. O. X., 80 bales. We paid 28¼ cents per pound, in all $25,350.42. We paid Mann for the cotton, and received from him bills of lading. This is one of the notes indorsed by him and delivered to us. We bought the cotton free on board.

We never, within ten days after the purchase, received notice from any one connected with the Idaho that the cotton had been seized in the Idaho. The bill of lading was delivered to us by Mann either the 4th or 5th of May. This is the bill of lading.

(Bill of lading offered in evidence, marked "Ex. I, C. L. B.")

We forwarded this bill to our agents in Liverpool, James Finlay & Co. Only 35 bales of this cotton was delivered to James Finlay & Co.

Cross-examination:

I never saw these 200 bales of cotton, and speak of their marks only from

their bills of lading and the bill. I never saw the marks. Purchase of cotton first brought to my attention on 3d of May by Mr. Mann, who came to me. He was confidential clerk to A. C. Schaefer & Co., cotton commission merchants, in New York. I knew Mann well; he was not a commission merchant, only as connected with Schaefer & Co. He had no bills of lading with him when he first came. He claimed to own the cotton. I knew
31 Schaefer & Co. as large dealers in cotton. He verbally stated that he owned the cotton. We agreed to take the cotton and fixed the price; no one present but Mann and me; paid the money on 5th of June. The note was given for the cotton, dated 3d May, but not delivered on that day. I was asked to buy by Mann. He gave me the terms, price, and classification of the cotton; he called it all low middlings. He said it was all about same quality; he did not show samples; nothing said about weight. We took the bill as evidence of the weight; took the bill on the 4th or 5th of May from Mann himself. I don't know when we gave him the note; it was made payable to Mann; it was the negotiable note of our firm. I don't know that the cotton was weighed after we bought; nothing was done to ascertain weight.

Received bills of lading on the fifth of May; may have given the note at a later day. It is usual in New York to buy cotton through brokers. It is a very unusual thing for an owner to sell cotton without a broker; it has happened only once or twice to me in my experience. I thought it singular that Mann should own this cotton. I may have questioned Mann as to his ownership, but don't recollect what I said. I understood the cotton was then on the Idaho. Nothing was said as to where the cotton had come from. Mann said that Schaefer & Co. guaranteed the transaction all correct, quite likely in answer to an inquiry from me. I asked no questions after he gave me that reply. I heard of the seizure of the cotton first from Mann, I think on the 5th or 6th of May. I don't recollect whether the Idaho had sailed. The note we gave was paid at maturity to Mr. Mann, about the 5th of June. When we paid the note we saw Schaefer & Co., and they guaranteed that we should be held harmless against any loss. We did not rest on Mann's guarantee; he is a mere clerk, so far as I know; would not consider his guarantee satisfactory without being confirmed. My firm appeared as defendants in Porter's replevin suit. Schaefer & Co. have advised about this suit, and I act in this suit under their advice and direction. This
32 remark applies to this suit and the suit commenced by Finlay & Co. in Liverpool, and our appearance in the replevin suit.

I did not know cotton came from New Orleans, but it was described as New Orleans cotton. I don't recollect whether at the time of this purchase I had heard of the great frauds of Forbes in lading the Colson in New Orleans. I heard of these frauds, but can't say I knew of it when I bought this cotton. I must have read of these frauds when they were published in the newspapers. I would be interested in the fact as a cotton man. Mann said he didn't wish me to ask whether it was really Schaefer's cotton; he said he had bought it of Schaefer; that was the substance of the conversation; I don't recollect his words. It was implied that he didn't wish me to ask, as it was all right. I suppose I must have asked how he came by the cotton. I never had any of the bills of lading on the Colson; heard afterwards that Schaefer had some; can't say whether I heard that before this note was paid.

Cotton sold at transit is weighed at shipment, and not reweighed until final delivery. When cotton is sold here free on board shipment from New York, it is generally reweighed here, unless there is an agreement to the contrary. Cotton is very seldom sold here free on board shipment in

New York. In this case I don't recollect anything being said about the weighing of this cotton here.

Redirect:

It would be customary to have the cotton reweighed to the buyer on a purchase of cotton free on board shipment from New York. I have often sold cotton here free on board shipment from New York.

(Libellant rests.)

Claimants then read in evidence the summons, pleadings, and other papers in the action of Porter against Cutting, &c., copies of which are annexed, marked as Exhibits A to M inclusive.

33 THOMAS M. SMITH, being called and sworn for claimant, says:

I reside in New York; am a life-insurance agent. In 1869 I was purser of the steamship Ladona; she belonged to Malley's line between New York and New Orleans—a propeller. I was her purser, and came in her from New Orleans, leaving New Orleans about April for New York. Left New Orleans April 10th, and arrived in New York about 28th; went by way of Matanzas.

(Objection by libellant to proof of title in Porter. Question reserved, and witness suspended for the time being.)

THOMAS SMITH recalled:

The cargo of the Lodona consisted of cotton and other articles. Her voyage was from New Orleans to New York, by Matanzas. She took 165 bales of cotton in New Orleans. I don't recollect the marks; the delivery-book will show the marks. I have no memorandum as to the marks of the cotton; my memorandum gives no number of bales. Some of the marks were ⟨T⟩; I remember no other marks. Purser's duty is to receive cargo and sign receipts for it. I was every day at the ship before she sailed; no other cotton brought to the ship but these 165 bales. We brought the 165 bales to New York; took no cotton to or at Matanzas. I attended delivery of cotton in New York. The cotton was delivered to lighter Charles, as the shipping-book will show. Agents of the Ladona have the shipping-book. I kept a discharging-book besides the shipping-book. This is the discharging-book which I delivered to the agents of the ship, Malory & Co. I took the receipt here for 165 bales. It is the receipt of Grote, master of the lighter, to whom I delivered the cotton. On looking at receipt, I recollect our shipping-mark on the cotton was ⟨T⟩. There were other marks on the cotton. (Receipt in evidence, Ex. N.) This was my last voyage by the Ladona.

34 Cross-examination:

This cotton came to the steamship on trucks. I think it was all in one lot, but am not certain. It all came from the same place. I think it was all shipped at one time. No cotton was brought to the Ladona and afterwards taken away. I put no marks on; shipper put the shipping-mark ⟨T⟩; that was on it when it came to the vessel. I cannot recollect time of day it came to the steamship. It was taken on board in a very short time. It was always unloaded on the levee and put on

board. I have an indistinct recollection of other marks on it, but I can't give them.

Redirect:

I do not know where it came from; for aught that I know, it might have come from different places. I had orders to deliver the cotton to the lighter.

I know the handwriting of Malory on this paper. (Exhibit 2, marked for identification.

STEVEN F. SHORTLAND, called and sworn for claimant, says:

I reside in Brooklyn; li'terage and cooperage, J. F. Shortland & Bro Own the lighter Charles, Captain Grote; Thomas Grote was her captain. He signed the receipt Ex. N. On the 28th of April our firm received an order from A. C. Schaefer & Co. to remove cotton from the Ladona. It was taken on the book; this is it. (Entry read, Ex. O.) We probably got landing-receipt on delivery to the warehouse, and that probably was passed to the party giving us the order.

Cross-examination:

I can't say that we had order on ship, but it is probable we had. The ship usually lay at Robert's stores, near Wall-street ferry, Brooklyn.

35 THOMAS M. CAMPBELL, being called and sworn for claimant says:

I live in Brooklyn; foreman of New York Warehouse Co.; their stores are at Red Hook Point. I was in charge of receiving and delivering goods to and from the stores in May, 1869. Books are kept there, and receipt-books. Stock-ledger contains general account of goods, and delivery on the receipt-book. Stock-ledger is made up from other books.

(Admitted by libellants that the 165 bales spoken of by witness Smith were taken by A. C. Schaefer & Co. into warehouse at Red Hook, and then shipped on the Idaho, and formed part of the 200 bales on the Idaho.)

This cotton, the book shows, came out of the warehouse on May 3d, 1869, and went by Young, a carman, 165 bales; ⟨T⟩ was the mark by which it was delivered to us.

This is an order for the delivery to Young by A. C. Schaefer & Co. (Ex. P.) 3d May. The cotton was mended. Cotton came into the warehouse April 30th, 1869. I have slight recollection of two persons inquiring on the morning of delivery to Young, and inquiring about this cotton. Probably all the cotton went out on May 3d.

Cross-examination:

165 bales went out on that day under our order from Mr. Schaefer. The receipt-book says the bagging was badly torn when received. I made the entry. I have no doubt I made it from my knowledge of the condition of the cotton. We make such entries to protect us.

WILLIAM H. GUION, being called and sworn for claimant, says:

Our firm was agents of this steamship Idaho in 1869. I remember the suit of Porter for cotton on her. Regular sailing-day was
36 Wednesday. Suit was commenced on Tuesday; she was receiving cargo as agreed; ship was not general ship. The first I heard

of Porter's suit was after 5 p. m. of Tuesday. I went around to A. C. Schaefer & Co.'s office that afternoon to notify them of the suit. I found no one of the firm there. The next morning these arrangements to have the cotton go forward were made under advice of our counsel. I saw Mr. Schaefer on the morning of the fifth, and notified him that the cotton had been seized by a writ of replevin by Porter as being part of the cotton shipped on the brig Colson. I inquired for Mr. Mann; I forget his reply. He said something about that Mann would be there during the day; and I think he said the cotton was not part of the Colson's cotton, or something like that. Mr. Schaefer made no request of me that I recollect. I think he said Mann would be to see me. Hammond, representing Schaefer, called during the day, Wednesday, and went down to see our counsel, Mr. Nash. I think it would have taken one day to take out the 165 bales and restow the cargo. We had other cotton on board, and bales were stowed promiscuously.

Cross-examination:

Mr. Hammond was counsel for Schaefer, representing at least the shipper. I am not positive that it was Wednesday that Hammond called; it may have been Thursday; vessel sailed at two p. m. on Wednesday, I think. The first I knew of the suit was when the sheriff came down from the ship to my office with Mr. Choate. It was between 10 and 11 of Wednesday that I saw Schaefer. I didn't see Mann. Cotton was engaged on the ship by Mr. Schaefer, and we only knew him, although the bill of lading was taken in the name of Mann. I asked for Mann, because his name was in bill of lading. I think I saw Mr. Barker, and other gentlemen were in the office.

I don't recollect saying that I would call again to see Mann; I didn't call again. I saw Schaefer before any arrangement was made with the sheriff. I think the arrangement was made between 11 and 12 o'clock.

37 I did not notify Schaefer that the cotton would be taken to Liverpool. I gave no notice of any kind except to Mr. Schaefer. We were indemnified by Duncan, Sherman & Co. against the bill of lading to Mann; that was part of the arrangement for the cotton to go forward. We did not give new bills of lading to Porter, but only the letter marked "C," in the Liverpool commission.

Redirect:

What I mean by indemnity by D., S. & Co. is the bond to the sheriff, (Ex. L;) I have no other indemnity. We didn't know where to find Mann; he had no place of business other than Schaefer's that we knew of; his name was not to be found in the directory; we didn't know who he was, or that he had a place of business with Schaefer & Co.

WILLIAM R. ALLEN, called and sworn for claimant, says:

Clerk in April and May, 1869, with Williams and Guion. I did not keep the freight-consignment book; this book contains the freight consignment of the Idaho for that voyage. The entry, on the first of May, of 200 bales of cotton is in the handwriting of A. C. Underhill; the erasure, and "Thos. W. Mann" written, is in my handwriting. I made that change when the bill of lading was brought to me, and I saw it was made out in the name of Mann. Mr. Underhill regularly kept the book. (The entry in evidence, Ex. Q.)

RICHARD A. WILLIAMS, called and sworn for claimant, says:

I was in the employ of Williams & Guion, receiving-clerk at the pier

of the steamship line, in 1869. I received the cargo of the Idaho on this voyage and gave receipts for the cargo; these receipts are signed by me for cotton shipped per Idaho May 3d; all the written part is in my handwriting. The number in the left-hand corner is the number
38 of the truck that brought the load and took the receipts. I gave the receipts to the truckman; each truckman brings a receipt, but we don't sign that receipt or ticket, but give our own receipt. Conklin & Davis, on our receipt, must have been on the truckman's ticket. "O," red, is our mark put on cotton on the dock; two receipts are "uncom.," because it was uncompressed cotton. I saw these bales were uncompressed; four of these trucks were Leggett's trucks. Young is foreman of Leggett's trucks—seven trucks in all.

I know nothing about the indorsement on the first receipt. (Receipts in evidence, Ex. R.) These 200 bales of cotton must have been mixed about the ship. I judge it would have taken a day to get those 200 bales of cotton out again.

Cross-examination:

All the 200 bales came to the ship on the 3d of May, and began to go in as soon as it began to come down, and judge it was all on board on the 4th of May.

ALBERT L. CONKLIN, called and sworn for the claimant, says:

I am a wholesale grocer, of Conkling & Davis: live at 52 Hanson Place, Brooklyn. Our house sometimes deals in cotton. The indorsement on the back of the first receipt is in my handwriting.

(Indorsement read, Ex. R.)

Our firm had no interest in this cotton. I was told that the freight had been engaged in our name, and I made the indorsement in order to have the bill of lading made out. I think we were requested to permit the freight to be engaged in our name. I think it was either Mr. Schaefer or Mr. Mann, but can't say which. I knew them both; both friends of mine. At that time our firm dealt in cotton as commission merchants. I did not engage the freight.

39 PETER CORCORAN, being called and sworn for claimant, says:

I am a cotton-mender. I remember getting orders to mend 200 bales of cotton in 1869, part in New York Warehouse Co. stores, Red Hook, Brooklyn, and part in West street, New York. I mended both lots in April or May, 1869. I think it was the 3d of May; book shows it to have been done May 3d, 1869. I didn't take memorandum of marks on the bales. I remember there was T or ⟨T⟩ on the bales at Red Hook Point. I think there were other marks. A. C. Schaefer & Co. employed me. Barker engaged me. I work for the house. I had direction from Mr. Barker the night before, I think; not positive. I think it was Mr. Barker. If not he, it was some one from the house. I have no written order; don't know as I had one.

I was directed to take all the marks of the cotton, and I did so. It was so directed as to those in Red Hook; don't know as it included those in West street. I believe I took no marks off the cotton in West street. I cut out pieces so as to obliterate the marks. Then we mended the bales. I think the order was to take out T or ⟨T⟩; don't know which. I sold the junk that day or the next, with other junk. I brought the junk to my place and sold it. Most of the bales were in bad order.

As a lot, they were in bad order. People were to see me about the junk, but I had sold it. I heard of inquiry about it before it was sold. Sometimes cotton is in bad order when it comes from the press. When it comes from the press at the South it is generally in good order.

Cross-examination:

My orders were to destroy all the marks, and I destroyed all the marks I could see on the cotton at Red Hook. I mended it with gray bagging. The store in West street was 40 West street, Burdett & Titus.

40 ANDREW M. UNDERHILL, being called and sworn for claimant, says:

I am in employ of Williams & Guion. I engaged freight for them, and I kept this engagement-book; made the entry Ex. Q. It is in my handwriting. This freight was engaged that day by Yale, of Cary & Yale, freight brokers. The broker gets the ship the freight contract, one copy. The copy we received is not to be found. The receipts for cargo shipped come back to us when we give bills of lading. We do not make out the bill of lading, but the shipper sends them in with the receipts. Exhibit 1 is the signature of our clerk, who gives the bill of lading. It is a common thing for shippers to re-let part of the room engaged. This book has the entire cargo of Idaho, and contains but one shipment by Mann—this 200 bales.

HAMILTON YALE, being called and sworn for claimant, says:

I am of the firm of Cary & Yale, freight brokers. About 1st May, 1869, I made contract of freight for Idaho. I entered the order as executed by me.

(Entry read, Ex. S.)

Can't say who applied to us. "Schaefer" means A. C. Schaefer & Co. We make entry in this little book, and from that we make out a filled-out contract and give to each a copy. Recopies the contract, which we sign in this large book. We also sign the copy as well. The large book copy reads A. C. Schaefer & Co.

(Contract in evidence, Ex. T.)

In course of business this contract would go to A. C. Schaefer & Co. Application must have been made to us by Schaefer or some of his employees, as my little book shows.

Deposition of WM. J. PORTER read, as follows:

41 I reside in the city of New York, and did in the months of April and May, 1869. I was then a commission merchant; the firm-name was W. J. Porter & Co.; the business was general commission, but cotton was the specialty. We had business dealings with Waddy Thompson, of New Orleans, who made consignments of cotton from New Orleans to us.

(Letter dated April 1st, 1869, shown to witness.)

I received this letter from Waddy Thompson; it is his accustomed signature in our correspondence with him.

(Letter offered in evidence, marked "Ex. A, J. A. O.")

(Objected to.)

(A draft signed John C. Forbes, drawn on W. J. Porter & Co., is shown witness.)

Q. Was that one of the papers received in the letter?

(Objected to.)

A. This draft was received in the letter, as stated in the letter. I know John C. Forbes' signature to the draft. He lived then in New Orleans, or was in New Orleans at that time. The indorsement on the back of the draft is the same. I could not tell exactly what day I received the letter, Exhibit A; it came by mail, by due course of mail.

Q. That letter refers to a draft for $5,000. Did you ever receive a draft for that amount such as is there described?

A. I paid a draft for $5,000 like the one described. When paid, I took it up and filed it among my papers; it was the original draft, and I presume I have the original draft among my papers. I went to New Orleans about the 29th of April, and I took a part of the papers with me; this draft I think I took with me. The drafts I took there I gave to my attorney, Mr. H. C. Miller. I have means for fixing the time when I paid that draft for $5,000. I fix it by the check which I now produce, dated April 5th, 1869.

42 (A draft for $6,243$\frac{23}{100}$, dated April 1st, 1869, and which witness testifies was in the letter Ex. A, J. A. O., is now offered in evidence, and marked "Ex. B, J. A. O.")

(Objected to.)

(Check dated April 5th, 1869, offered in evidence, Ex. C, J. A. O.)

(Objected to.)

Q. Who is G. E. Hamilton, who signed for W. J. Porter & Co. in check Exhibit C, J. A. O.?

A. He was my book-keeper and cashier, and had my power of attorney to sign checks. The draft for $5,000 was presented to me by the Bank of New York.

Q. Look at letter dated April 3d, 1869, and state whether you received that from Waddy Thompson; if so, state when.

(Objected to.)

A. I received it about the 7th of April, 1869, I think.

(Letter offered in evidence, marked "Ex. C 1, J. A. O.")

(Letter objected to.)

Q. This letter refers to a draft by John C. Forbes for $4,000 on you. Was such a draft presented?

A. There was such a draft presented. I paid it and took it up. I presume it is with the other drafts which were taken to New Orleans. I have the check with which I paid this second draft.

(Check dated April 7th, 1869, offered in evidence, marked "Exhibit D, J. A. O.")

(Objected to.)

43 The funds on which those checks were drawn I had in a banking-house and in the bank, and the checks have been returned to me by the banking-house and bank.

Q. Look at the paper, viz, letter dated April 8th, 1869, shown you, and see if you received that from Waddy Thompson; and if so, when?

A. I did; about the 13th of April, 1869.

Q. Please look at paper or invoice, dated April 8th, 1869, and the weigher's certificate of same date, and state how and when you received them.

(Objected.)

A. The invoice and weigher's certificate I received in the letters of April 8th, 1869.

Q. Look at signature to invoice, and tell us whose it is.

(Objected to.)

A. That is the customary signature of Waddy Thompson at that time.

I have had correspondence for several weeks with Waddy Thompson, and am familiar with that signature, and acted on it.

(The letter of April 8th, 1869, is offered in evidence.)

(Objected to. Received in evidence under objection; marked "Ex. E, J. A. O.")

(Invoice of April 8th, 1869, offered in evidence. Objected to. Received in evidence; marked "Exhibit F, J. A. O.")

(The weigher's certificate of April 8th, 1869, offered in evidence. Objected to. Received in evidence; marked "Exhibit G, J. A. O.")

Q. Had you, previously to the receipt of letter of April 1st, 1869, received from Waddy Thompson a letter relating in any way to Exhibit B, or to any draft of the tenor of Exhibit B?

(Objected to.)

44 A. I had a letter, dated March 31st, 1869, which I produce, signed Waddy Thompson, as usual, which I received the 3d or 4th of April, 1869.

(Letter offered in evidence, dated March 31st, 1869. Objected to. Received under objection, and marked "Exhibit H, J. A. O.")

Q. Please look at Exhibit H, and state whether the drafts therein referred to for $20,000 and $30,000 were presented to you.

A. They were; they were presented and accepted and paid. I think I have the drafts, unless they are with the other drafts in New Orleans, as before stated. At the present time I have charge of my papers myself, and shall leave them in charge of Mr. Punnett if I go away.

Q. Look at Ex. H, and state whether the balance for $6,243\frac{27}{100}$ was the balance unprovided for, at the date of that letter, of the two drafts of $50,000.

A. Yes.

Q. Did you receive a bill of lading for 139 bales of cotton, such as is described in letter of April 1st, 1869? (Ex. A, J. A. O.)

(Objected to.)

A. I did.

Q. How did you receive it?

A. I think the bill of lading was attached to one of the drafts—that is, I think I got one in the letter and one with the draft.

Q. Look at bill of lading, April 1st, 1869, and state whether that is one of the parts you have so received.

A. It is.

(Bill of lading, dated April 1st, 1869, offered in evidence. Objected to, and received under objection; marked "Ex. J, J. A. O.")

Q. Look at Exhibit E, and state whether or not you ever re-

45 ceived a bill of lading for one bale of cotton; if so, how many parts?

(Objected to.)

A. I did; I received this part in a letter.

(This bill of lading, dated April 8th, 1869, offered in evidence. Objected to. Received under objection; marked "Exhibit K, J. A. O."

Q. Look at Exhibit I, J. A. O., and state if you know the handwriting of the signature, Julius A. Pratt, or the indorsement of John C. Forbes.

(Objected to.)

A. I do not know the signature of Julius A. Pratt, but do that of John C. Forbes.

Q. Look at Ex. K, and state if you know the handwriting of the signature, Julius A. Pratt, or the indorsement of John C. Forbes.

(Objected to.)

A. Same answer as to last question.

Q. At the time you received the draft Ex. B, had you any funds in your hands for the payment of it?

A. I had none other but as provided for by the bill of lading.

Q. At the time drafts for $4,000 or $5,000, or either of them, were presented to you, had you any funds or property of Forbes or Thompson in your hands to provide for the same, or to apply for their payment, other than the bill of lading for 139 bales of cotton?

(Objected to.)

A. I had not.

Q. Have either of those drafts for $6,243\frac{27}{100}$ or $5,000 or $4,000 ever been paid or taken up by Forbes, Thompson, or any other party?

46 A. They have not.

I expect to leave for New Orleans to-night, and not to return until April. I left New York for New Orleans on the 29th of April, 1869; I think that was the day. I know the members of the firm of A. C. Schaefer & Co. I had heard before leaving that there was some difficulty about the cargo of C. C. Colson at New Orleans.

Q. Did you have any conversation with Mr. Barker or Mr. Schaefer with regard to some difficulty in relation to the shipment of the cargo of the Colson?

(Objected to.)

A. I did have some with Mr. Barker before I left here; nothing was said except about the fact of the seizure of the C. C. Colson.

Cross-examined by Mr. Pomeroy:

The firm of W. J. Porter and Co. consisted of myself.

Q. When did you receive Exhibit B, J. A. O.?

A. In a letter dated the 1st of April, 1869. I received that letter of April 1st, 1869, about the 4th or 5th of April, 1869. I may have received the first of exchange in the same letter. Exhibit B is the second of exchange. I can't state positively whether I have or not seen the first of exchange. I think Ex. B is the identical draft I received in letter of April 1st, 1869; if I have seen any others of the set, it came directly from Waddy Thompson to me.

Q. Had you previous to the 1st of April, 1869, or up to and including the 8th of April, 1869, any personal acquaintance with John C. Forbes?

A. I had met the gentleman; had never had business transactions with him, but knew him when I saw him.

Q. Previous to your seeing these drafts upon you, Ex. B, and the $5,000 and the $4,000 drafts, had John C. Forbes ever drawn on you?

A. Possibly in one instance, March 31st, 1869; previous to that I have no remembrance of Forbes drawing on me.

47 Q. Did you previous to the 10th of April, 1869, ever see John C. Forbes write?

A. No, sir; I have seen him write since.

Q. Had you, at the time of the presentation of these drafts, any knowledge of Forbes' handwriting except from the drafts?

A. Yes, sir; I had seen his writing before.

Q. When did you receive the two drafts—one for $5,000 and the other for $4,000?

A. At the times of the dates of the checks.

Q. Were they sight-drafts?

A. They were, and came into my possession on presentation.

Q. Did anything accompany those two drafts for $4,000 and $5,000 when presented to you?

A. I think a part of the set of Exhibit J came with one of the drafts; I am not positive which. I had an arrangement with Duncan, Sherman & Co., as bankers, to get advance or borrow money on bills of lading as collateral security. I borrowed money on this bill of lading, about the same amount that I advanced. I borrowed on this bill of lading about $15,000. I gave Duncan, Sherman & Co. the bill of lading; delivered it to them; generally endorse them over.

Q. Did you ever get these bills of lading back from Duncan, Sherman & Co.; if so, when?

A. I did, such as they had in their possession then, just about the time we were advised of the seizure of the vessel, and just before I went to New Orleans. I heard of the seizure two or three days after it occurred—about the 21st of April, 1869.

Q. Can you tell about the time you borrowed the $15,000 from Duncan, Sherman & Co.?

A. Just about the time I paid it out; the date of the checks, April 5th and 7th, 1869.

Q. Are Exhibits J and K the identical bills of lading received by you from Duncan, Sherman & Co.?

A. I think they are.

48 Q. Are you sure?

A. There is no private mark about them which makes it positive. Duncan, Sherman & Co. may have three parts of the set, and returned me these.

Q. Did they ever deliver you any other of the parts?

A. They returned to me all the bills of lading; some of them I did not get at once; I had to wait, but finally got them all.

Q. After the seizure of the Colson did you enter into any agreement with Duncan, Sherman & Co. with reference to any advances which they had made you on these or any bills of lading? If so, state that agreement; if in writing, produce it.

A. There was a verbal agreement with Mr. Duncan, of Duncan, Sherman & Co.—whether it was given in writing I do not now remember positively—that upon the delivery of these documents (all the bills of lading on the Colson) I was to deliver to him, in lieu of them, other collateral securities which I then had at command, (I have carried out that agreement,) and to apply whatever collections I made on these bills of lading, or from any parties in any way connected with them, towards the payment of these advances. On the 5th of May, 1869, I was in New Orleans or en route.

Q. Look at Exhibit B; did you ever pay that draft?

A. This draft, $6,243 $\frac{27}{100}$, came directly to me; the drafts for $5,000 and $4,000 came through the bank.

Q. Did you part with any money on draft Exhibit B?

A. The amount of this draft was embraced in drafts for $30,000 and $20,000.

Q. Did this draft accompany these bills of lading Exhibits J and K?

A. It came to hand about the same time; I don't remember whether it accompanied them or not. I have been engaged in the cotton business; I am acquainted with the grade and quality of cotton and weight of bale.

Q. In bales of cotton of similar grade and quality, what determines the value of the bale of cotton?

A. Its weight. I have known marketable bales of cotton

49 to run as low as 350 and as high as 750 to 800 lbs.

Q. Did you commence, through your attorneys or by yourself,

a suit against one Cutting, master of the steamship Idaho, in April or May, 1869?

A. I commenced a suit; can't tell the date of it.

Q. Was that suit in the Supreme Court?

A. I don't know; I may have signed papers in that suit, by my attorney. I think I made an affidavit, through my attorney, in that suit. The exact date of the affidavit I cannot now remember.

Q. Did you make an affidavit in that suit previous to your going to New Orleans on the 29th of April, 1869?

A. I may have done so through my attorney; can't remember as to date.

Q. When did you first learn of that replevin suit?

A. I commenced so many proceedings that I can't tell when I first heard of it. I knew pretty well of all suits before they were commenced.

Q. Did you make an affidavit in that replevin suit stating that you were the owner or entitled to the possession of certain cotton at the time of making such affidavit, on board the steamship Idaho?

A. I think I may have made an affidavit through Brown, my attorney, that I was the owner. At the time the affidavit was made I had never seen the cotton on the Idaho.

Q. Did you swear to the complaint in that case?

(Objected to.)

A. I don't remember.

Q. Did you know the weights and marks of the cotton on the Idaho?

A. No; for I had never seen the cotton.

Q. Was any cotton on board the Idaho on her voyage on the 5th of May, 1869, delivered to you or your agent in Liverpool? If so, to whom, when, where? And, if you can, state the marks, weights, and numbers thereon.

A. One hundred and sixty-five bales were delivered on her
50 arrival in Liverpool to Messrs. Baring Brothers; can't give the weights and numbers without my returns.

Q. Did you receive the benefit of the proceeds of the 165 bales of cotton?

A. I did.

Q. Did you claim a portion of that 165 bales of cotton, as the cotton included in Exhibits J and K?

A. I claim that as my cotton.

Q. (Question repeated.)

A. I don't know that I understand you by the meaning of the word claim.

(Question repeated.)

A. I have set up a legal claim for it through my attorney. I don't know that this is the cotton that went on the Idaho; I did not see it.

Q. Do you claim any portion of that 165 bales of cotton as any portion of the cargo of the steamship Lodona?

(Objected to.)

A. I claim that 165 bales that came by the Lodona as my cotton, and I am following it up.

Q. Do you claim this 165 bales to be it?

(Objected to.)

A. I was informed that I had 165 bales of cotton by the Lodona, and through the best means of information I had. Then I followed it up, the parties to whom it was consigned by the Lodona throwing every

obstacle in our way they could of destroying the identity. I have traced it to the best of my belief.

(Counsel for libellant moves to strike out the answer as not responsive. Objected to.)

Q. Do you claim this 165 bales to be it?

(Objected to.)

A. I do not know that I claim it as the identical cotton, bale for bale, with that by the Lodona.

Q. On whose order was this cotton delivered in Liverpool to Baring Brothers?

A. I presume on my order; I know it now that I or my attor-
51 ney gave it.

Q. When was the bill of exchange for $20,000 and $30,000 paid?

A. At the date of maturity; bills of lading did not accompany these bills of exchange for $20,000 and $30,000.

Q. Did you ever bring any suit against the brig C. C. Colson?

A. Yes; in New Orleans; Henry C. Miller and Huntington were my attorneys.

Q. Did you in that suit make a claim for 139 bales mentioned in Exhibits J and K?

(Objected to.)

A. I brought a general suit, but in what shape I don't know, on all the bills of lading, as I then understood.

Q. Please look at Exhibit U annexed to the commission returned from New Orleans, in this case, and say whether that petition was made at your request and by your authority.

A. The petition was made by my authority, but as to details, it was never submitted to me.

Q. Please look at your testimony in Exhibit Y in said commission, and state whether the same is true and correct.

Adjourned to December 2d, 1870, at one p. m.

J. A. OSBORNE,
U. S. Commissioner.

DECEMBER 2D, 1870.

Parties present, and witness replies to the question as follows:

A. It is, to the best of my knowledge.

Q. Are you acquainted with the custom of bankers in loaning and advancing moneys on bills of lading, and the requirements of the bankers as to such bills of lading?

A. I am.

Q. Was the cotton mentioned in bills of lading, Exhibits J and K, termed transit cotton in this market?

52 A. It was.

Q. What were the requirements of bankers as to bills of lading of transit cotton about April 1st, 1869?

(Objected to.)

A. The usual requirement was, whatever number of the set of bills of lading there were was to be turned over to them, and frequently advances were made on one of the set, bankers relying on the customers to furnish rest or set complete; Duncan & Sherman required in this case all that I had. I do not now remember how many I had.

Q. Do you know if bills of lading of same tenor and date, and against the same purported shipment of cotton, were drawn, other than you received?

A. I know of no other set of bills of lading other than I received.

Q. Can you state how many of this set of bills of lading you delivered to Duncan, Sherman & Co. of this bill of lading, Exhibit K?

A. I cannot state how many of the set of bills of lading of any particular lot upon which I obtained advances; in some cases they were complete, in others I don't think they were. I think I delivered two bills of lading of Exhibit J, and I don't remember how many I delivered of Exhibit K.

Q. Had you between the first of April and 10th of April, 1869, any correspondence with John C. Forbes, directly, with reference to these drafts you have testified to, or to these bills of lading, Exhibit J and K?

A. I had not.

Q. Previous to the 31st of March, 1869, had John C. Forbes ever drawn upon you?

A. I think not; don't remember.

Q. Did you or did you not rely wholly upon the statements, letters, and correspondence of Waddy Thompson as to these drafts?

A. Waddy Thompson was my correspondent, and I relied on his statements and correspondence.

53 Q. Do you know whether the cotton mentioned in the bills of lading, Exhibits J and K, were insured by yourself or Duncan, Sherman & Co., or under an open policy of Duncan, Sherman & Co.; and, if so, for what amount and in what company or companies?

A. This cotton was insured by Duncan, Sherman & Co., not under an open policy, but, I think, in the American Lloyd's.

Q. Under the agreement made between you and Duncan, Sherman & Co., what were the collaterals you deposited with them, and what was their market-value other than to deliver the proceeds of claims under these bills of lading?

A. All the securities that I theretofore deposited on general account were retained on this special account; all but a life-insurance policy for $25,000 were undetermined in value.

Q. Can you approximate the value of these securities, about what they were worth?

A. I cannot even approximate.

Q. With regard to the advances made to you by Duncan, Sherman & Co. on Exhibits J and K, how much have you collected from any source, and how much thereof have you given to Duncan, Sherman & Co.?

A. I have received the proceeds of 165 bales of cotton at Liverpool through Duncan, Sherman & Co., amounting to about $21,000; I have received from New Orleans from $12,000 to $13,000, on proceedings against the vessel and cargo of the C. C. Colson and the U. S. marshal; the number of bales of cotton mentioned in the bills of lading, set out in my examination heretofore inquired of, in Exhibit Y in the commission from New Orleans, is the number included and involved in these suits; this $12,000 to $13,000 was received on all the bills of lading, and how much, if any, of it was to be considered as received on these bills of lading, Exhibits J and K, I don't know and can't say; the same amount of $12,000 to $13,000 has been paid to Duncan, Sherman & Co.; this $12,000 to $13,000 was not all the proceeds of these suits; Mr.
54 Schaefer received some of the proceeds, but $12,000 to $13,000 was all I received.

Redirect:

Q. You were asked if Exhibit B accompanied J and K. Look at the letters already produced by you, and say whether J and K came at the same time.

A. J and K did not come at the same time.

Q. Can you now state that Ex. B came with either J or K?

A. I am satisfied that Ex. B came in the letter of April 1st from Waddy Thompson, with bill of lading, Exhibit J, J. A. O., or one of the set; upon reflection, and on examination of the papers in the case, I am now satisfied that I had two bills of lading of the tenor and date of Ex. J; that the other one, besides the one now produced in evidence, was annexed to my deposition taken in New York, of which Ex. Y, annexed to commission taken in New Orleans, is a copy; both these bills of lading were indorsed, by me, W. J. Porter & Co., when delivered by me to Duncan, Sherman & Co.; I have no knowledge of any other being received; my remembrance is exactly the same in reference to Ex. K, J. A. O.; what affidavit, if any, I made in the suit against Cutting was drawn by William G. Choate, my attorney; I have looked for the original drafts for $5,000, $4,000, $20,000, and $30,000 since the adjournment of yesterday, and I am satisfied that they were annexed to my deposition taken here and sent to New Orleans, to be used on the trial there in the case of Porter vs. the C. C. Colson, a copy of which deposition is in Exhibit Y, annexed to the commission sent from New Orleans; I don't think that I ever saw John C. Forbes write until between the 29th of April and the 10th of May, on my way to New Orleans.

W. J. PORTER.

Subscribed and sworn to before me this 2d day of December, A. D. 1870.

JOHN A. OSBORN,
U. S. Commissioner.

55 EXHIBIT A.—J. A. O.

OFFICE OF WADDY THOMPSON,
No. 47 Carondelet Street, New Orleans, 1st April, 1869.

Messrs. W. J. PORTER & Co.,
142 *Pearl Street, New York:*

DEAR SIRS: We hand you herewith B. Lg. 139, B. C., per brig C. C. Colson, shipped by Mr. J. C. Forbes, and against which he has drawn, favor self..... $5,000 00
Favor self..... 6,243 27

The latter draft we hand you herewith to make up balance on drafts for..... 20,000 00
30,000 00

$50,000 00

Say remt. you 29th March..... 6,400 00
30 " 963 83
31 " 36,392 90
to-day 6,243 27
$50,000 00

Mr. Forbes will draw for balance against above 139 bales, within margin, in course of day or two.

We are, dear sirs, yours truly,

Per WADDY THOMPSON,
CHAS. A. JANVIER.

EXHIBIT B.—J. A. O.

Exchange for New Orleans. 1st April, 1869, $6,243.27. At sight of this second of exchange (first unpaid) pay to the order of myself sixty-two hundred and forty-three $\frac{27}{100}$ dollars, value received, and charge the same to account of shipment of 139 B. C. per C. C. Colson.

JNO. C. FORBES.

To Messrs. W. J. PORTER & Co.,
New York.

(Indorsed:) "Pay to yourselves, Jno. C. Forbes."

56 EXHIBIT C.—J. A. O.

No. 686.] NEW YORK, *April* 5, 1869.

[Cancelled stamp.]

Messrs. Duncan, Sherman & Co., bankers, pay to Bank of New York, or order, five thousand dollars, ($5,000.00.)

W. J. PORTER & CO.,
By G. E. HAMILTON.

Certified on face. On back: Paid at the Bank of New York. I.

EXHIBIT C 1.—J. A. O.

OFFICE OF WADDY THOMPSON,
No. 57 Carondelet Street, New Orleans, 3d of April, 1869.

Messrs. W. J. PORTER & Co.,
New York:

DEAR SIRS: Referring to our respects of even date, we now beg to advise Mr. J. C. Forbes, at this date, his own favor, $4,000, (four thousand dollars,) against shipment 139 B. C., per C. C. Colson. B. Lg. sent you 1st inst. This still leaves balance to draw for within margin. Will make up invoice and use draft for balance first of week.

We have your dispatch of this morning, and have just answered. Cannot use coffee at price. We thought there must have been an error in sending the dispatch, and had it duplicated. We do not understand what you mean by "place all but about one thousand." We inclose
57 the duplicate, so that you can see just how it came. If you can get a reduction in price we might perhaps do something.

I am, dear sirs, yours truly,

Per WADDY THOMPSON,
CHAS. A. JANVIER.

We inclose 2d of exchange.
Sent you 1st inst., $6,243.$\frac{27}{100}$.

EXHIBIT D.—J. A. O.

No. 283.] NEW YORK, *April 7th,* 1869.

[Cancelled stamp.]

Bank of America. Pay to the order of Bank of New York four thousand dollars, [$4,000.]

W. J. PORTER & CO.

Certified on face. On back: Paid at the Bank of New York. I.

A. J and K did not come at the same time.

Q. Can you now state that Ex. B came with either J or K?

A. I am satisfied that Ex. B came in the letter of April 1st from Waddy Thompson, with bill of lading, Exhibit J, J. A. O., or one of the set; upon reflection, and on examination of the papers in the case, I am now satisfied that I had two bills of lading of the tenor and date of Ex. J; that the other one, besides the one now produced in evidence, was annexed to my deposition taken in New York, of which Ex. Y, annexed to commission taken in New Orleans, is a copy; both these bills of lading were indorsed, by me, W. J. Porter & Co., when delivered by me to Duncan, Sherman & Co.; I have no knowledge of any other being received; my remembrance is exactly the same in reference to Ex. K, J. A. O.; what affidavit, if any, I made in the suit against Cutting was drawn by William G. Choate, my attorney; I have looked for the original drafts for $5,000, $4,000, $20,000, and $30,000 since the adjournment of yesterday, and I am satisfied that they were annexed to my deposition taken here and sent to New Orleans, to be used on the trial there in the case of Porter vs. the C. C. Colson, a copy of which deposition is in Exhibit Y, annexed to the commission sent from New Orleans; I don't think that I ever saw John C. Forbes write until between the 29th of April and the 10th of May, on my way to New Orleans.

W. J. PORTER.

Subscribed and sworn to before me this 2d day of December, A. D. 1870.

JOHN A. OSBORN,
U. S. Commissioner.

55 EXHIBIT A.—J. A. O.

OFFICE OF WADDY THOMPSON,
No. 47 Carondelet Street, New Orleans, 1st April, 1869.

Messrs. W. J. PORTER & Co.,
142 *Pearl Street, New York:*

DEAR SIRS: We hand you herewith B. Lg. 139, B. C., per brig C. C. Colson, shipped by Mr. J. C. Forbes, and against which he has drawn, favor self..... $5,000 00
Favor self..... 6,243 27

The latter draft we hand you herewith to make up balance on drafts for..... 20,000 00
30,000 00

$50,000 00

Say remt. you 29th March..... 6,400 00
30 " 963 83
31 " 36,392 90
to-day 6,243 27
$50,000 00

Mr. Forbes will draw for balance against above 139 bales, within margin, in course of day or two.

We are, dear sirs, yours truly,

Per WADDY THOMPSON,
CHAS. A. JANVIER.

EXHIBIT B.—J. A. O.

Exchange for New Orleans. 1st April, 1869, $6,243.27. At sight of this second of exchange (first unpaid) pay to the order of myself sixty-two hundred and forty-three $\frac{27}{100}$ dollars, value received, and charge the same to account of shipment of 139 B. C. per C. C. Colson.

JNO. C. FORBES.

To Messrs. W. J. PORTER & Co.,
New York.

(Indorsed:) "Pay to yourselves, Jno. C. Forbes."

56 EXHIBIT C.—J. A. O.

No. 686.] NEW YORK, *April* 5, 1869.

[Cancelled stamp.]

Messrs. Duncan, Sherman & Co., bankers, pay to Bank of New York, or order, five thousand dollars, ($5,000.00.)

W. J. PORTER & CO.,
By G. E. HAMILTON.

Certified on face. On back: Paid at the Bank of New York. I.

EXHIBIT C 1.—J. A. O.

OFFICE OF WADDY THOMPSON,
No. 57 Carondelet Street, New Orleans, 3d of April, 1869.

Messrs. W. J. PORTER & Co.,
New York:

DEAR SIRS: Referring to our respects of even date, we now beg to advise Mr. J. C. Forbes, at this date, his own favor, $4,000, (four thousand dollars,) against shipment 139 B. C., per C. C. Colson. B. Lg. sent you 1st inst. This still leaves balance to draw for within margin. Will make up invoice and use draft for balance first of week.

We have your dispatch of this morning, and have just answered. Cannot use coffee at price. We thought there must have been an error in sending the dispatch, and had it duplicated. We do not understand what you mean by "place all but about one thousand." We inclose
57 the duplicate, so that you can see just how it came. If you can get a reduction in price we might perhaps do something.

I am, dear sirs, yours truly,

Per WADDY THOMPSON,
CHAS. A. JANVIER.

We inclose 2d of exchange.
Sent you 1st inst., $6,243.$\frac{27}{100}$.

EXHIBIT D.—J. A. O.

No. 283.] NEW YORK, *April 7th,* 1869.

[Cancelled stamp.]

Bank of America. Pay to the order of Bank of New York four thousand dollars, [$4,000.]

W. J. PORTER & CO.

Certified on face. On back: Paid at the Bank of New York. I.

EXHIBIT E.—J. A. O.

OFFICE OF WADDY THOMPSON,
No. 57 Carondelet Street, New Orleans, 8th April, 1869.

To Messrs. W. J. PORTER & Co., *New York:*

DEAR SIRS: We hand you herewith invoice of 140 B. C., per brig C. C. Colson ..... $17,984.$\frac{08}{100}$

Against which Mr. Forbes has drawn:

1st April	$6,243 $\frac{27}{100}$	
" "	5,000 00	
3d "	4,000 00	
		$15,243 $\frac{27}{100}$

58 A fraction over the margin. We inclose weigher's certificate and also B. L. for 1 bale, completing 140 bales. You will notice a slight difference between invoice and B. L.

The B. Lg. calling for	L. 36	Invoice 35
	S. 14	16
	50	51

And, as above stated, we hand you B. Lg. for one bale over.

Expect to send you bills of lading for a larger lot this afternoon or to-morrow morning.

Yours truly,

Per WADDY THOMPSON,
CHAS. A. JANVIER.

Favor inclosing duplicate B. L. of 9 B. C., per str. C. C. Colson, to hand.

EXHIBIT F.—J. A. O.

Invoice of 140 B. C., per brig C. C. Colson, shipped by J. C. Forbes, New Orleans to Liverpool, consigned to order:

O. 1—63	63	B. C. low mdlg	28,900
F. 1—26	26	" str. good ordy	12,140
L. 1—35	35	" good ordy	16,699
S. 1—16	16	" ordinary	7,223
	140		64,962 at 26¾ $17,377 $\frac{33}{100}$

Charges:

Insd. in press ¼ per ct	$43 44	
Dray to ship at 25c	35 00	
Brokerage ½ per ct	86 88	
Express and samples	7 00	
Commission 2½ per ct	434 43	
	606 75	$17,984 08

59 Ex. O. E.
New Orleans, 8th April, '69.

Per WADDY THOMPSON,
CHAS. A. JANVIER.

20c. per B.	$17,984 08
	2,800 00
	15,184 08

EXHIBIT G.—J. A. O.

I hereby certify that I have reweighed the following (140) bales of cotton, and weighed as follows:

O 1	455	11	525	21	540	31	505	41	456	51	500
1@63	473		479		394		464		450		495
	416		403		446		468		449		476
	512		485		465		443		481		495
	465		479		422		457		421		453
	415		422		472		451		506		442
	488		434		453		480		334		511
	506		502		506		365		446		444
	453		431		473		394		469		444
	459		453		512		529		473		336
	4642		4613		4683		4556		4485		4596
O 61	427	F 1	443	11	486	21	477	S 1	432	11	406
	478	1@26	513		464		508	1@16	496		484
63	420		462		398		475		435		379
	...		449		474		460		495		343
	...		456		420		435		451		351
	...		456		489	26	466		497	16	534
	...		494		395		...		519		...
	...		479		473		...		466		...
	...		490		598		...		480		...
	...		471		409		...		405		...
	1325		4713		4606		2821		4726		2497
60		L 1	450	11	470	21	472	31	526		
		1@35	418		497		571		466		
			419		467		445		531		
			494		521		532		425		
			453		484		455	35	398		
			470		447		585		...		
			457		500		436		...		
			460		489		373		...		
			486		508		496		...		
			462		533		503		...		
			4569		4916		4868		2346		

O 63 bales cotton weighing	.....	28,900
F 26	"	"	"	.....	12,140
L 35	"	"	"	.....	16,699
S 16	"	"	"	.....	7,223
140	"	"	"	.....	64,962 lbs.

New Orleans, April 8th, 1869.

AUG. RANCOURT,
Weigher

REC. 136—3

EXHIBIT H.—J. A. O.

OFFICE OF WADDY THOMPSON,
No. 57 Carondelet Street, New Orleans, 31st March, 1869.

Messrs. W. J. PORTER & Co.,
142 *Pearl st., New York. P. O. box* 5361:

DEAR SIRS: We hand you herewith invoice 310 B. C. per str. Geo. Cornwell, amounting to $42,592\frac{00}{100}$, and also for our credit, Mr. J. C. Forbers, sr., on your good selves, against same, $36,392\frac{90}{100}$. The b. ldg. for 310 bales we hand Mr. Pike, as per agreement, when we sold him the $30,000 3 per cent. on 27th inst., to be handed over to you on payment of the said $30,000.

We draw on you as advised.

61	25th March, 5 per cent	$20,000 00		
	27th " 3 "	30,000 00		
			$50,000 00	
	I have remitted you to cover same 29th March	6,400 00		
	30th March	963 83		
	To-day, above	36,392 90		
			43,756 73	
	Leaving still unprovided for		$6,243 27	

and, by making this negotiation, have succeeded in controlling 310 B. C. to you.

We have just telegraphed you, advising that we send you to-day b. ldg. 310 bales.

We have permitted Messrs. F. to draw within $20 per bale of cost, including charges. The cotton is worth more to-day than it is invoiced at.

Yours, truly,

Per WADDY THOMPSON,
CHAS. A. JANVIER.

EXHIBIT J.—J. A. O.

Shipped in good order and well conditioned, by J. C. Forbes, on board the brig called the C. C. Colson, whereof is master, now lying in the port of New Orleans, and bound for Liverpool, one hundred and thirty-nine bales of cotton, marked and numbered as in the margin, and are to be delivered without delay in the like good order and condition at the port of Liverpool (the dangers of the navigation and fire only excepted) unto order of shipper or to assigns, he or they paying freight for the said cotton at the rate of seven-sixteenth of one penny sterling per lb. weight, with five per cent. primage and average accustomed.

O	63	30,874
F	26	12,384
L	36	18,047
S	14	6,707
	139	68,012

7-16d.

62 In witness whereof the master or agent of the said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

JULIUS A. PRATT.

NEW ORLEANS, 1*st April*, 1869.

(Indorsed:) Deliver to order, W. J. Porter & Co., Jno. C. Forbes, W. J. Porter & Co., 9,410, No. 1, filed with testimony of J. A. Pratt, May 24, 1869; 5,849, U. S. C. court, filed April 30th, 1869, F. B. Vinot, dy. clk., 109 J. D.

EXHIBIT K.—J. A. O.

Shipped in good order and well conditioned by J. C. Forbes, on board the brig called the C. C. Colson, whereof is master, now lying in the port of New Orleans, and bound for Liverpool, one bale of cotton, marked and numbered as in the margin, and are to be delivered without delay in the like good order and condition, at the port of Liverpool (the dangers of the navigation and fire only excepted) unto order of shipper, or to assigns, he or they paying freight for the said cotton at the rate of seven-sixteenth of one penny sterling per pound weight, with five per cent. primage and average, accustomed.

S 1 B. C.
Whg. 450 lbs.

In witness whereof the master or agent of the said vessel hath affirmed to four bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

JULIUS A. PRATT.

NEW ORLEANS, *April* 8, 1869.

(Indorsed:) No. 6, W. C., 9,410, filed with testimony of J. A. Pratt, May 24th, 1869. Deliver to W. J. Porter & Co., J. C. Forbes, W. J. Porter & Co., 5849, U. S. C. court, filed April 30th, 1869. J. B. Vinot, dy. clerk, 104, J. D.

63 Claimants then read the following depositions, taken at New Orleans on commission:

Deposition of H. W. Farley, taken 10th of November, 1870.

First interrogatory. What is your name, age, residence, and occupation, and what was your business and where did you reside in the month of April, 1869?

A. My name is Henry W. Farley; I reside in New Orleans; am 56 years of age. I am a cotton-factor, and was so engaged in business in 1869, and I resided in said city in 1869.

Second interrogatory. State whether or not, on or about the 5th day of April, 1869, your firm of H. W. Farley & Co. sold to John C. Forbes or Waddy Thompson a lot of 140 bales of cotton, or thereabouts. If yes, state the number of bales, and the marks on the bales, and the number of bales of each mark, the quality of the cotton, the price, the name of the purchaser, and the name of the broker, if any, through whom the sale was made. State also where the cotton was at the time of the sale, and when, where, and to whom it was delivered, and whether the price of the same was paid to you.

A. My firm of H. W. Farley & Co. did, on the 5th of April, 1869, sell to A. E. Bignon, broker, for account of Waddy Thompson, 139 bales of cotton, marked (76 bales) "E E;" 40 bales, "D D;" 13 bales, "J J;" 5 bales, "P;" 5 bales, "L." Those marks were on the cotton when I sold it. The quality is not now remembered by me; price was 26¾ cents. The cotton, at the time it was sold, was at the shipper's press in New Orleans; it was delivered at said press, as appears by our weighing-book, on the 6th of April, 1869, to our order of the 5th of April, 1869, in favor of A. E. Bignon, broker, and the price of the same was
64 paid to us by Waddy Thompson. Although I sold 139 bales to Mr. Bignon, as above stated, one bale was rejected, being unmerchantable, making 138 actually sold by my firm, weighing 64,077 lbs., and amounting to $17,140$\frac{60}{100}$. Mr. Bignon, the broker, procured two

other bales from some other source, and included them in his return to my firm. The two bales weighed 885 lbs., and amounted to $236\frac{73}{100}$. The price of the 140 bales was paid to me by Waddy Thompson, amounting to $\$17,377\frac{32}{100}$, and my firm returned the price of the two bales to Mr. Bignon, the broker. Our order for the delivery was given to A. E. Bignon, the broker. The usual mode of delivery of cotton in New Orleans is by giving to the broker an order upon the press for its delivery for the buyer. The factor rarely knows the buyer until the broker makes his return. Waddy Thompson in this case was returned as the buyer.

(Witness now produces the return of the broker, which is hereto annexed and marked "A.")

Nineteenth interrogatory. Do you know any other matter or thing which may be for advantage of the claimants in the suit? If so, declare the same fully, as if thereunto specially interrogated.

A. I do not.

First cross-interrogatory. Look at the bill of lading for 139 bales cotton, per brig C. C. Colson, now shown you, dated April 1st, 1869, and state whether the evidence you have given relates to the cotton named in this bill of lading; do the marks correspond with any cotton sold by you to John C. Forbes or Waddy Thompson on or before 1st April, 1869; do the weights correspond with any cotton sold by you to them on or before 1st April, 1869? You have been asked to state the number of bales and marks, and number of bales of each mark that you sold. Please state how many bales were rejected, what mark or marks there were on any rejected. How many bales did you actually deliver; how many bales did you actually get paid for? What was the
65 weight of the bales you got paid for? Were the marks you have given the same marks that were on it at the time you made the sale? Are you aware of these marks having been changed? If you answer yea, answer by whom. Look at your evidence taken before U. S. commissioner and signed by you 9th June, 1869, now shown you. Did you deliver 140 bales therein testified as sold? Explain that testimony of yours and annex a copy of the same to your answer.

(Witness now being shown bill of lading for one hundred and thirty-nine bales of cotton, presented to him in the presence of me, commissioner, by the clerk of the United States district court, a copy of which is hereto annexed, marked B, says:)

A. Although the marks on the bales sold by me do not correspond with those in the bill of lading, yet the shipping-marks put upon the cotton sold by me, as appears from my weighing-book, are as follows:

Weight	L. number	1–10 and 12–36	35 bales.
O.	"	1–63	63 "
F.	"	1–26	26 "
S.	"	1–14	14 "
S.	"	15–16	2 "

These last being the two bales furnished by broker.

Witness now produces the weigher's book; knows it to be such. It shows the weights of the cotton by their shipping-marks.

(The accompanying extracts, made by me, commissioner, and designated by the letter "D," are true copies of the marks and weights taken from the weigher's book, produced by the witness.)

Witness has already stated and exhibited the weights of the cotton sold by him, i. e., the 139 bales.

Witness says: On the 23d of March, 1869, we sold to A. E. Bignon, broker, for account of Waddy Thompson, 526 bales of cotton, weighing in the aggregate 245,156 lbs.; the 526 bales of cotton do not embrace

the 139 bales of cotton above referred to by me in my foregoing answers.

66 I have already stated that there was one bale of cotton rejected of the 139 sold. The mark of the rejected bale was "E E." I actually delivered 138 bales of the lot of 139 bales. Actually got paid for the 128, besides the two which Bignon procured; and also delivered and was paid for the 526 bales sold on the 23d of March, which do not embrace the 138 bales or the two bales.

I have given the marks which were on the cotton at the time of the sale, and I have given the marks from the weighing-book at the time they were shipped. I do not profess to know personally, except from the weigher's book, the marks by which the cotton was shipped. The weigher's name was Irvine Bradfute, who kept the weigher's book and weighed the cotton to which I have referred.

Witness recognizes the testimony now shown him as that which he gave on the date stated, and says it is fully explained, if any explanation is necessary, in the evidence here given. A copy of that testimony is hereto annexed, marked "E," certified to by the clerk of the United States district court.

The two bales of cotton procured by Bignon must have been put in the press to our account, as it was weighed by our weigher in his returns with the 138 bales; but I do not know personally anything about it except what appears in the weighing-book.

I do not know that my evidence relates to the 139 bales referred to in the bill of lading dated April 1st, 1869, but it appears from my weighing-book that the marks in the weighing-book correspond with the marks on the bill of lading.

H. W. FARLEY.

Examination taken, reduced to writing, subscribed by the witness, and sworn to by the witness, this 10th day of November, A. D. 1870, before—

FRANK N. BUTLER,
Commissioner.

67 H. W. FARLEY recalled by claimants:

Being shown the original order produced before me, commissioner, by the yard clerk of the Shippers' Press, copy whereof is hereto annexed, marked "E E," states that is the original order upon which the cotton sold by H. W. Farley & Co. was delivered. The copy marked "E E" is a true copy of that order; the signature thereto witness knows to be correct, because he has often seen J. H. Farley write and sign his name, and the order itself emanates from witness's house.

H. W. FARLEY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this tenth day of November, 1870, before—

FRANK N. BUTLER,
Commissioner.

Deposition of Robert R. N. Keaghey, taken 14th of November, 1870.

First interrogatory. What is your name, age, residence, and occupation, and what was your business, and where did you reside in the month of April, 1869?

A. My name is Robert R. N. Keaghey; aged 24 years. In April, 1839, I was shipping-clerk in the Shippers' Press. My duties were to attend to the shipment of cotton from the press; am a resident of the city of New Orleans.

Third interrogatory. State whether or not you were connected with the Shippers' Press, New Orleans, in April, 1869; if yes, in what position; what were your duties?

(Answer embodied in the preceding answer.)

68 Fourth interrogatory. Have you any knowledge of the delivery from the Shippers' Press, on or about the 8th day of April, 1869, of 140 bales of cotton, or thereabouts, to John C. Forbes, or Waddy Thompson, or to either of them, or upon the order of either of them, or to the brig C. C. Colson, then lying in the port of New Orleans, or to any of its officers? If yes, state fully all that you know of such delivery; give the date of the delivery, the number of and marks on the bales; state in whose name it was stored in said press previously to such delivery, and by whose order the delivery was made. Was the order in writing? If yes, annex it to your answer. If you decline to annex the original, state why, and annex a copy of it. State, if you know, the handwriting in which the order is signed. Whose handwriting is it, and how do you know the handwriting?

A. I shipped 140 bales of cotton from the Shippers' Press to the brig C. C. Colson, for account of Waddy Thompson, on the 8th day of April, 1869. I can't give the planters' marks, but I can give the shipping-marks, and the number of bales to each mark, though I cannot give the shipping-numbers. The shipping-marks are: O 63, F 26, L 35, S 16. These were the marks on the bales when they were shipped from the press to the brig C. C. Colson.

I cannot state in whose name these 140 bales were stored at the press previous to their shipment; the books of the press show that they were stored in the name of J. W. Farley & Co.; I cannot state, as it is not a part of my business to know, on whose order the cotton was shipped.

Fifth interrogatory. Did you take receipts from the officers of said vessel, or any of them, for said cotton? Where are those receipts

69 now, and where did you last see them? Please look at the ten papers now shown you by the clerk of the United States district court for the district of Louisiana, and state whether or not they are the same receipts taken by you for the said cotton. Please examine the papers shown you by the commissioner before whom your testimony is taken, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, and state whether or not the same are true copies of said receipts.

A. I took receipts from the officers of the Colson for the 140 bales. I see the receipts now before me, being produced by the clerk of the United States district court. I delivered them myself to the clerk of the United States district court when I gave my testimony on a previous occasion, and took his receipts for the same. Those are the original ten receipts taken by me from the officers of the brig C. C. Colson for the 140 bales of cotton shipped from the Shippers' Press. I have examined the copies of said originals also, now shown me by the commissioner, and testify that they are true copies of the original receipts for the 140 bales shipped from the Shippers' Press to the C. C. Colson, as aforesaid. These copies of said receipts, certified by C. Clarborne, clerk United States district court, and by me, commissioner, are hereto attached, marked "F."

Nineteenth interrogatory. Q. Do you know any other matter or thing which may be for advantage of the claimants in this suit? If so, declare the same fully, as if thereunto specially interrogated.

Second cross-interrogatory. Q. If you answer to third interrogatory that you were connected with Shippers' Press, state whether you are still there, and have you access now to the files of the Shippers' Press or to the books of delivery and receipts thereof.

A. I am still connected with the Shippers' Press, and I have access to the files and to the receipts referred to, and to the books.

70 Third cross-interrogatory. Q. Look at the bill of lading for 139 bales cotton, per brig C. C. Colson, now shown you, dated 1st April, 1869. Now state whether the evidence you have given relates to the cotton named in that bill of lading of 1st April, 1869. If you have stated in your reply that you knew of the delivery on 8th April, 1869, of 140 bales, or thereabouts, to the brig C. C. Colson, state the exact number of bales delivered.

Do you know of the delivery of these bales to the brig C. C. Colson from your own knowledge, otherwise than by receipts? Did you see the cotton delivered to this brig Colson yourself?

Was the cotton weighed at the Shippers' Press? Who weighed it? What were the marks originally on these cottons when you had it in the Shippers' Press on account of H. W. Farley & Co.? Are not the marks of every lot of cotton entered on the books or files of the press when received?

Did you ship or deliver this cotton by the original marks by which it had been stored, if stored in the press previous to 8th April, 1869? If you didn't deliver or ship this cotton by the original marks by which it has been stored, what were put on them?

Were there any other marks on the bales except such as you have named? If so, give a list of them, and annex hereunto? Were not the weights of each bale marked thereon? Had the marks that were on the bales when delivered by you been put on with a stencil-plate or brush only?

Were they marked with red ink, or paint, or black? Was this cotton you delivered all compressed, or any portion? If a portion, then state how many. In what description of bagging was this cotton put up, gunny-cloth or hemp bagging? If some of the bales were in both, state number of each. Was this lot of cotton put up with iron ties or ropes? If both, state how many bales of each. If you have said you delivered this lot of cotton on an order, did you ever see the party whose name

71 is attached to that order write his name? Did you see him write the order? If you answer nay, state, then, how you know the signature is correct.

A. I cannot say that the cotton I speak of is the same as that mentioned in the bill of lading shown to me, because cotton by the same marks might have been shipped by the same parties from other presses; but the shipping-marks on the bill of lading correspond with the marks on the receipts as far as they go, except that my receipts only call for 35 bales marked L, and the bill of lading calls for 36 L; and my receipts calls for 16 bales marked S, while the bill of lading calls for 14 bales marked S.

The exact number of bales delivered is 140. I only know of the delivery of these cottons to the brig C. C. Colson by the receipts delivered to the draymen by the brig. These were draymen of the Shippers' Press. I did not see the cotton delivered to the brig. The cotton was weighed at the Shippers' Press by Mr. Irvine Bradfute. I don't know the marks on the cotton at the time it was first stored in the press, nor do I know anything of the marks entered on the books of the press. I did not ship the cotton by the original marks. The marks shown by

the dray receipts were those by which the cotton was shipped. I don't know anything of any other marks than the shipping-marks. The planters' marks were on the bales, though I don't know them. The weights were not marked on the bales at the time of shipment that I am aware of. The shipping-marks were placed on the bales by a brush; they were marked with black ink. All the cotton was compressed. I don't know in what kind of bagging the cotton was put up in. I don't recollect whether the cotton was bound in iron ties or ropes. I know nothing of the order upon which the cotton was delivered.

Fourth cross-interrogatory. Q. If you state you took receipts, in answer to fifth interrogatory, state how you knew that the receipts alluded to are from the officers of the Colson. At the time these
72 papers were handed to you, did you then know the position and names of the various officers of the Colson? Were you acquainted with the signatures of the officers? Had you ever seen them write before? If you answer nay, how then do you know of your own knowledge that the signature is correct? If you did not see every bale delivered yourself at the Colson, and were not previously acquainted with the signatures of the officers, can you, of your own knowledge, swear it was delivered there? You are asked to look at copies of some ten receipts and state whether the same are true copies of said receipts. How can you swear that they are true copies, without having the original to compare with them? Is the signature to the copies the same as in the original? If you answer nay, state wherein the difference is. How many bales were called for on each receipt? How many bales did the whole ten receipts call for?

Read your deposition now shown you, sworn before Chas. Clarborne, June 2, 1869. State whether your evidence given therein is correct and true; if not, wherein not. Please annex a copy thereto.

A. I don't know the signatures of the officers of the ship. I don't know that they are genuine. Didn't know at the time who the officers were. Only knew that the receipts were returned by the draymen in due course of business. I know that the copies exhibited to me are true copies, for the reason that I have compared them with the originals now before me. To the 19th interrogatory he saith, I do not.

R. R. N. KEAGHEY.

Examination taken, reduced to writing, subscribed by the witness, and sworn to by the witness, this 14th day of November, A. D. 1870, before—

FRANK N. BUTLER,
Commissioner.

73 *Deposition of F. M. Roby, taken Nov.* 14, 1870.

Twelfth interrogatory. Q. Were you an officer of the brig C. C. Colson during the months of March and April, 1869, or part of that time? If yes, state what officer you were, and for what length of time. Who was then master of the vessel?

A. I was the first mate of the brig C. C. Colson, from about the 20th of March to the 20th of April, 1869. Julius A. Pratt was the master of said brig during said time.

Thirteenth interrogatory. Q. Please look at the two bills of lading now shown you by the clerk of the United States district court for the district of Louisiana, one for 139 bales of cotton, dated April 1, 1869; the

other for one bale of cotton, dated April 8, 1869, and state in whose handwriting is the signatures to said bills—"Julius A. Pratt." What are your means of knowledge as to his handwriting?

A. Witness being shown (2) bills of lading produced to him by the clerk of the United States district court, one for 139 bales of cotton, dated 1st of April, 1869, and one for one bale cotton, dated 8th April, 1869, states the signatures thereto are those of Julius A. Pratt and in his handwriting. I know his handwriting from having seen his signature to other writings written by him, which I acted upon as his signature and writing, to his knowledge and with his acquiescence. (Copies of said bills produced to the witness and certified by Chas. Clarborne, clerk of the United States district court for the district of Louisiana, are herewith filed, marked "B C," and annexed to the testimony of H. H. Farley.)

Fourteenth interrogatory. Q. State whether or not the cotton described in said bills of lading was delivered to the said ship, and state all that you know as to such delivery, the time and place when and where the cotton was delivered, who received it on behalf of the ves-
74 sel, whether or not it was put on board. If not put on board, where and how far from the vessel it was put after it was received by the ship, and in whose custody or keeping it remained, and for how long a time, and whether or not it was within reach of the tackles of the Colson, and if so, for how long, and whether it was taken away again, and if so, when and by whom, or by whose order, and where was it carried to? State all that was said about it, so far as you know, by the person (if any) by whose order it was removed. Was there any other lot of cotton removed at or about the said 8th day of April, from the pier or levee at or near the place where the C. C. Colson was lying, or was there any other cotton then lying at or near the same place which was in the keeping and custody of its officers? If so, was it or not removed therefrom on or about said 8th day of April?

A. There was 140 bales of cotton delivered to the brig C. C. Colson of the following marks: 63 bales of cotton marked "O," 26 bales marked "F," 35 bales marked "L," 16 bales marked "S." These bales were delivered on the 8th of April, 1869, in this city, at the wharf at which the Colson was then lying, upon which all cargoes intended for her was deposited. I received the cotton as mate on behalf of said brig, and it was not put on board. When received the cotton was deposited on the wharf within forty feet of the Colson. It remained there in my custody, as mate, from some time in the morning of the day of the 8th of April, 1869, it was brought there until the evening of that day, when it was carried away. There was another vessel beside the Colson lying at this wharf. At the time of this delivery the other vessel was nearest the wharf, the Colson next. The tackling of the Colson did not reach to the place on the wharf where the cotton was deposited. Her tackles was adapted to reach to the staging on which cargo for the Colson had been deposited. The wharf was the usual and only place to deposit freight when delivered to the vessel to be taken on board. This cotton was deposited in the usual and customary place for cargo to be deposited for the Colson. The
75 cotton was carried away by the order of John C. Forbes. I do not know where it was carried, nor do I know the names of those who carried it away. Forbes said he intended to ship it by another vessel. There was no other lot of cotton removed on or about this date from or about the levee at or near the place where the Colson was lying except these 140 bales of cotton. There was no other lot of cotton but these 140 bales then lying at or near said wharf or levee in the custody of the officers.

I have stated the 140 bales of cotton were removed. The signatures to the original (10) receipts are in pencil.

Fifteenth interrogatory. Q. Did you give any receipt or receipts for said 140 bales of cotton, or any part of it? Please look at the ten papers now shown you by the clerk of the United States district court of the district of Louisiana, purporting to be receipts for said cotton, and state whether they are or either of them are receipts which you gave for the same upon its delivery to the said vessel? As to any of said receipts not signed by you, state by whom they are signed, and whether the person who signed them was an officer of the said vessel, and, if so, what officer at the date thereof, and what are your means of knowledge as to his handwriting.

A. I gave receipts for 126 bales of cotton of the 140 bales, and M. Keenan, second mate, receipted for 14 of the bales.

Witness being shown the (10) receipts now produced to him by the clerk of the United States district court, states that they are the (10) receipts given for the 140 bales of cotton to which I have testified. Nine of them are signed by me, as my signature now appears on them. One of said receipts is signed by M. Keenan, who at that time was second mate of the Colson. I know his signature from having seen him write and sign his name. Said receipts were given on the day of their date, when said cotton was delivered. Copies of said receipts produced to the witness, certified by the clerk of the United States district court, are hereto attached as part hereof, and marked "F."

76 Nineteenth interrogatory. Q. Do you know any other matter or thing which may be for advantage of the claimants in this suit? If so, declare the same fully, as if thereunto specially interrogated.

A. I do not.

Eleventh cross-interrogatory. Q. If you answer yea to the 12th interrogatory, state what day of the month your duties commenced and when they ceased. Who appointed you officer?

A. My duties commenced about the 20th of March, 1869. They ceased about the 20th of April, 1869, when the Colson was seized. Pratt employed me.

Twelfth cross-interrogatory. Q. If you state that the handwriting inquired of in the 13th interrogatory is that of Julius A. Pratt, did you see him affix his signatures to those bills of lading? Have you never seen any other parties write the same? Is there any peculiarity in the writing that you can swear these signatures were made by him? Are you a sufficient expert in writing to detect between real and imitated signatures? State on what day you first saw these bills of lading now shown you. What circumstance is there to impress it on your memory that it was the time you named?

A. I did not see J. A. Pratt affix his signature to said bills of lading; never saw other persons write the same; no other peculiarity than that of his signature. I can swear that it is, from my knowledge of his signature. I think I could detect between real and counterfeited signatures. I first saw these bills some time last year, when I was examined as a witness in the United States district court. The time when I first saw these bills of lading is only impressed upon my memory from my recollection of it. I was not present when the bills of lading were executed. It was not my business to execute them.

77 Thirteenth cross-interrogatory. Q. You are asked to state whether or not the cotton described in said bills of lading was delivered to the said ship. Now look at the bill of lading dated 1st April, 1869, for 139 bales, and state whether on the first day of Apri r

previous to that time any such cotton was delivered to the ship. You are asked to testify to the cotton described in said bill of lading. Now will you swear that cotton marked as in the bill of lading existed, bearing these marks, on 1st April, 1869? If you answer yea, state how you know it. Did you on 1st April, 1869, or previously, see any bales cotton with the marks named in bill lading of 1st April, 1869, for 139 bales? Where did you see them? Now, as to all the answers given by you as to delivery, time and place, where and when delivered, and who received it, are you testifying to the identical cotton that was on board the Colson on the 1st April, 1869, and so represented in the bill lading of 139 bales, and not to say other cotton afterwards? You have been asked to state where this cotton was carried to. Now, will you swear that any of the 139 bales that were shipped on the Colson on or before the 1st April, 1869, were ever carried away? We do not refer to cotton afterwards, but solely of cotton on board the brig Colson on 1st April, 1869, or previous thereto. You have been asked to state by whose orders it was removed. Does your answer given allude to 139 bales cotton that were on board the Colson on 1st April, 1869? Was the cotton you testify to as being removed on 8th April, 1869, ever within reach of the tackles on the wharf or on board the Colson on the 1st day of April, 1869?

You are asked to state in whose custody the cotton was. Was the 139 bales as set forth in the bill of lading ever in the custody of the brig Colson or her officers previous to or on the 1st April, 1869? If in the interrogatory propounded to you you state you know where certain cotton was carried to from the Colson, how do you know it? Did you follow every bale? Did you keep each bale all the time in sight from the time it left the Colson until it was delivered where you say it was carried to? Do you know of your own personal knowledge what
78 you testify to? Was there not a lot of cotton on the 8th April on the wharf by the Colson, and which cotton had never been on board of or within the tackles of the Colson on the 1st day of April or previously?

A. I have looked at the bills of lading for 139 bales of cotton. No such cotton was delivered to the ship on or before the 1st day of April, 1869. The cotton to which I refer was that delivered on the 8th April, 1869. I have no knowledge of the existence of cotton bearing those marks on the 1st of April, 1869. I swear to the existence of cotton bearing those marks on the 8th of April, 1869. I did not see any bales of cotton on or previous to the 1st of April, 1869, with the marks named in bill of lading of 139 bales. I have not testified to any cotton being on board; my answers as to the delivery refer to the lot of 140 bales of cotton delivered to me as mate, deposited on the wharf and not put on board. I do not know, and have not stated, where the cotton was carried to. My answers as to the order to remove the cotton refers to the cotton on the wharf and not on board. The cotton I testified to as being removed was not within reach of the tackles of the Colson; there were no tackles on the wharf; the cargo for the Colson had to be rolled by hand up a staging from the wharf to the deck of the Colson. I have stated the cotton was not on board. The cotton that I testified to as being in my custody was not in my custody on or before the 1st of April, 1869. I have given no testimony as to where the cotton was taken to from the Colson. There was the lot of 140 bales on the wharf by the Colson on the 8th of April, 1869, and which had never been on board or within reach of the tackles of the Colson on the 1st of April, 1869, or previously. The 140 bales of cot-

ton was carried from the wharf where it was deposited, as I have stated, but do not know or swear where it was carried.

Fourteenth cross-interrogatory. Q. Were these ten papers you are asked to look at the only receipts you signed for the brig Colson?

79 Had you not signed several other receipts for the same number of bales on each separate receipt as they were signed for separately? How were the signatures on the original receipts, in ink or in pencil? How can you swear that the copies shown you are true and correct copies of the original without having the originals by you to compare? Is there no difference in the wording or marks? Can you, from your memory, state marks and number of bales of each mark on each separate receipt? If so, do it.

A. The nine receipts are not the only receipts I ever signed for the brig C. C. Colson. I signed other receipts for the cotton; do not recollect the number of bales specified in these other receipts, and I cannot say whether these other reeeipts for other cotton were for same number of bales as those named in the ten receipts. No other receipts were ever given for the lot of 140 bales but those ten receipts produced. Copies of these receipts are now shown me, and I know them to be originals. I cannot, from my memory, state the marks and number of each mark in each receipt; know the marks originally from the receipts, and because I signed them at time of the delivery of the cotton.

F. M. ROBY.

Examination taken, reduced to writing, subscribed by the witness, and sworn to by the witness, this fourteenth day of November, 1870, before—

FRANK N. BUTLER,
Commissioner.

Recalled for claimant.

First interrogatory. Q. What is your name, age, residence, and occupation, and what was your business, and where did you reside in the month of April, 1869?

80 A. My name is Francis M. Roby. I am 26 years of age. I reside in New Orleans; am occupied as a clerk in the office of the New Orleans Picayune. In the month of April, 1869, I was by profession a sailor, and at that time I was first mate on board the brig C. C. Colson, at the port of New Orleans.

To nineteenth interrogatory he saith:

A. I do not know of any other matter than what I have already testified unto which may be of advantage to claimants, that I am aware of.

F. M. ROBY.

Examination taken, reduced to writing, subscribed and sworn to by the witness, this 14th day of November, 1870, before—

FRANK N. BUTLER,
Commissioner.

Deposition of C. A. Janvier, taken Nov. 14th, 1870.

First interrogatory. Q. What is your name, age, residence and occupation, and what was your business and where did you reside in the month of April, 1869?

A. My name is C. A. Janvier; residence, New Orleans; occupation, a clerk, and that was my business in 1869.

Sixth interrogatory. Q. Were you connected in business in any way in

April, 1869, with Waddy Thompson, then doing business at New Orleans as a cotton factor or merchant? If so, state what that connection was and how long it had continued.

A. I was connected in business in April, 1869, with Waddy Thompson, as his book-keeper; had been connected with him for some months previously in the same capacity.

81 Seventh interrogatory. Q. Please look at the two papers now shown to you by the clerk of the United States district court for the district of Louisiana, and purporting to be bills of lading, one for 139 bales of cotton and the other for one bale of cotton, by the vessel C. C. Colson, at and from New Orleans to Liverpool, dated April 1st and April 8th, 1869, respectively, and signed Julius A. Pratt, and state whether or not you have seen those papers before, and where you saw them first, and in whose handwriting are the signatures to the same, and in whose handwriting are the written parts of the same and the several indorsements thereon; and state fully all your means of knowledge as to the handwriting of each person to whose handwriting you testify.

A. I have looked at the two bills of lading, one for 139 bales of cotton and one for one bale of cotton, presented to me by the clerk of the United States district court, referred to in this interrogatory. Both are signed Julius A. Pratt. I know the signatures thereto to be his from having seen him write and sign his name; both are endorsed John C. Forbes. I know the endorsement to be his signature from having seen him write and sign his name. The written part of the bill of lading for 139 bales of cotton is in my handwriting; the written part of the bill of lading for one bale of cotton is in the handwriting of one who was in the employ of Waddy Thompson at that time, named Newroth. I know his handwriting from having seen him write. I first saw these papers, I suppose, at the time they bear date, but may have been a day or two after their date; I am positive it was about that time. I have stated my means of knowledge. I filled it up myself; was in Waddy Thompson's employ and in his office at the time; know the handwriting of Newroth. The endorsements on the backs of each, "Deliver to W. J. Porter A Co.," is in my handwriting, and was made by me about the dates of the bills of lading. I do not know the signature of W. J. Porter & Co.

82 (Copies of said bills of lading, certified by C. Clarborne, clerk United States district court, and by me, commissioner, marked "B & C," are herewith attached, and filed by me, commissioner, with the testimony of H. W. Farley.)

Eighth interrogatory. Q. State what you know, if anything, as to the purchase of the cotton described in said bills of lading by Waddy Thompson at or about the date thereof, and on whose account the same was purchased, and the date of the purchase.

A. I know that Waddy Thompson purchased and paid for 140 bales of cotton from H. W. Farley & Co., for account of John C. Forbes; the date of the purchase was 7th of April, 1869.

Ninth interrogatory. Q. Did you know the brig C. C. Colson, and where was she in the months of March and April, 1869? Who was her master and mate or mates in those months, and especially in the first ten days of April, 1869?

A. I never saw the Colson. Julius A. Pratt acted as her master in April, 1869, and in March, 1869; he signed bills of lading for her in those months.

Tenth interrogatory. Q. Please look at the three papers now shown

to you by the clerk of the United States district court for the district of Louisiana, and purporting to be bills of exchange drawn by John C. Forbes upon W. J. Porter & Co., New York, payable at sight to the order of said Forbes, one dated April 1, 1869, for five thousand dollars, one for $6,243.27, dated April 1, 1869, and one for four thousand dollars, dated April 3, 1869, and state if you know in whose handwriting is the signatures and indorsements of the said drafts, and in whose handwriting is the written part of the body of said drafts. State fully all your means of knowledge as to the handwriting of the several persons to whose handwriting you testify.

83 A. I have looked at two bills of exchange, one for $5,000 and one for $4,000, produced to me by the clerk of the United States district court. (Copies whereof, certified to by the clerk of the United States district court, Mr. C. Clarborne, and by me, commissioner, marked G—H, are (*a*) (*b*) herewith filed as part hereof, and annexed by me, United States commissioner, to the testimony of C. Clarborne, clerk.) The signatures of the drawer of said draft is that of John C. Forbes; the indorsements, Waddy Thompson, per pro. C. A. Janvier, are in my own handwriting. At the time those indorsements were placed upon the bills I was the attorney in fact and agent of Waddy Thompson. I was authorized by him to indorse said bills, and did as his agent and attorney in fact indorse them. The body of these bills is in my handwriting; they were filled up by me. The clerk does not produce to me any bill for $6,243.27.

Eleventh interrogatory. Q. State all that you know as to the negotiation or disposition of said drafts.

A. I know that the two bills, one for $5,000 and one for $4,000, were negotiated by Waddy Thompson to Pike, Brother & Co., and proceeds of the bills were paid by them to Thompson by passing proceeds to his account. Pike, Brother & Co. were bankers, and Thompson kept an account with them.

Nineteenth interrogatory. Q. Do you know any other matter or thing which may be for advantage of the claimants in this suit? If so, declare the same fully, as if thereunto specially interrogated.

A. I do not.

Fifth cross-interrogatory. Q. Had you any interest in the business of Waddy Thompson? If so, state it. What is your present occupation?

84 A. I had no interest in Waddy Thompson's business. I am now looking for employment, and have no present business.

Sixth cross-interrogatory. Q. What is the date of the bills of lading for 139 bales inquired of? When did you first see this bill of lading? What is the date of the bill of lading for one bale?

A. The bill of lading is dated April 1, 1869, as appears from it. I first saw it when it was executed, the day of its date, or it may have been a day or two after that date.

Seventh cross-interrogatory. Q. You have been shown the bill of lading for 139 bales shipped 1st April, 1869. Now does this evidence you have given in regard to a lot of cotton refer to the same identical bales that were put on board of the Colson on the 1st April, or previously?

Was it or was it not the same lot of cotton?

Was there or was there not, to your knowledge, any lot of cotton on 1st April, 1869, in existence, bearing such marks or weights as shown in the bill of lading of 139 bales? You are asked to state what you know of the cotton described in said bill of lading.

Did Waddy Thompson on that day previously buy the 139 bales therein mentioned; and, if so, when and where, and of whom?

A. I do not know that any cotton was ever put on board the brig C. C. Colson. I know that there was such a lot of cotton in existence from the bill of lading and the purchase from Farley & Co. and the broker's invoice. Waddy Thompson purchased the 140 bales of cotton on or about the 7th of April, 1869, and not on the 1st of April, or previously.

I had no personal knowledge on the 1st of April, when the bill of lading was executed, of the cotton or its marks, but believe there was a lot of 139 bales on hand which, not being shipped, the 140 bales was brought to replace it.

85 Eighth cross-interrogatory. Q. If you answer that you know the brig C. C. Colson, state who was her master and her mate or mates on the 1st of April, 1869.

A. I have already answered this cross-interrogatory, and refer to my previous answer.

Ninth cross-interrogatory. Q. If you answer yea to the question that you know the three drafts shown you, one of them appearing to be for $\$6{,}243\frac{27}{100}$, dated 1st April, 1869, on what day did you first see that draft? Will you swear positively it was drawn on 1st of April, 1869? To whom was the draft given, and on what date?

Through what bank, broker, or person was that draft negotiated, and when and where, and by whom? If you answer yea to the question that you know the three drafts shown you, read your deposition taken before Chas. Clarborne, U. S. commissioner, on 2d June, 1869, and which is now shown you, and state whether it is your testimony, and annex the same to your answer.

A. I have not testified to any draft for $\$6{,}243\frac{27}{100}$; none such has been produced to me.

Tenth cross-interrogatory. Q. If you answer to the eleventh interrogatory you know of the disposition and negotiation of said drafts, did you negotiate and dispose of them yourself? Did you receive the proceeds yourself? If you answer nay, how do you know of your own knowledge?

A. I cannot recollect whether the drafts, one for $4,000 and one $5,000, were negotiated by Thompson, or by myself for him. I know they were negotiated, because I know the proceeds of the negotiation were paid to and received by Thompson.

CHAS. A. JANVIER.

86 Examination taken, reduced to writing, subscribed by the witness, and sworn to by the witness this 14th day of November, A. D. 1870, before—

FRANK N. BUTLER,
Commissioner.

Feb. 17th.—Hearing resumed.

ANGUS MCINTOSH, being sworn and examined on behalf of claimants, says:

I am in the employ of Duncan, Sherman & Co. as foreign correspondent for them. I receive and open their letters. This letter from Baring, Bro. was received by them May 3d, 1869, answered May 4th, 1869. Admitted that on 3d May, 1869, bill of lading of 139 bales of cotton by the Colson had been returned from Liverpool and received by Duncan, Sherman & Co. in New York.

Cross-examination:

I know the signature of Duncan, Sherman & Co. (Shown bill of lading

by Lodona.) I know this indorsement is the indorsement of Duncan, Sherman & Co.

(Marked "Exhibit 4," for identification.)

Claimants then read from the New Orleans commission the following depositions:

Deposition of Philip J. McGrath, taken Nov. 14, 1870.

First interrogatory. Q. What is your name, age, residence and occupation, and what was your business, and where did you reside, in the month of April, 1869?

87 A. My name is Philip J. McGrath. I am 30 years of age; reside in New Orleans; am yard-clerk of the Shippers' Press; was so employed and resided in said city in April, 1869.

Third interrogatory. Q. State whether or not you were connected with the Shippers' Press, New Orleans, in April, 1869? If yes, in what position? What were your duties?

A. I was connected with the Shippers' Press as yard-clerk in April, 1869. My duties were to attend to the receiving and turning out for delivery the cotton in the press upon factors' orders.

Fourth interrogatory. Q. Have you any knowledge of the delivery from the Shippers' Press on or about the 8th day of April, 1869, of 140 bales of cotton, or thereabouts, to John C. Forbes or Waddy Thompson, or to either of them, or upon the order of either of them, or to the brig C. C. Colson, then lying in the port of New Orleans, or to any of its officers? If yes, state fully all that you know of such delivery; give the date of the delivery, the number of and marks on the bales. State in whose name it was stored in said press previously to such delivery, and by whose order the delivery was made. Was the order in writing? If yes, annex it to your answer. If you decline to annex the original, state why, and annex a copy of it. State if you know the handwriting in which the order is signed. Whose handwriting is it, and how do you know the handwriting?

A. I do know that 140 bales of cotton were turned out, marked, and weighed in the Shippers' Press, on the 8th day of April, 1869, to be sent from there to the brig C. C. Colson, and I know they were sent from the press on that date.

Those 140 bales of cotton were stored in the press previous to being sent from the press in the name of H. W. Farley & Co., except two bales of cotton, which were stored in the name of A. E. Bignon's *name.*

88 These bales were marked as follows when received into the press: E E, 95; D D, 40; J J, 13; P, 5; E B, 2; L, 5 bales of cotton. When sent from the press to be delivered to the C. C. Colson they were marked O, 63 bales; L, 35 bales; F, 26 bales; S, 16 bales.

The first being the planters' marks and the last the shippers' marks.

These 140 bales of cotton were turned out upon the order of H. W. Farley & Co. The original of that order I now produce, and it is now in the possession of the Shippers' Press.

I decline to annex that original, because it is a voucher for the press on which the cotton was delivered. I furnish a copy of that order, which is hereto annexed.

(Marked "E E," by me, commissioner, the same being annexed to the testimony of H. W. Farley.)

The signatures to that order I know to be genuine, because the press acted upon the order as genuine, and H. W. Farley & Co. treated and acted upon that order as their own; and I know the signatures, because

I have frequently seen other writings bearing same signatures as this order, which other writings and signatures H. W. Farley & Co. treated, adopted, and recognized as genuine and authentic signatures.

Fifth interrogatory. Q. Did you take receipts from the officers of said vessel, or any of them, for said cotton?

Where are those receipts now, and where did you last see them?

Please look at the ten papers now shown you by the clerk of the United States district court for the district of Louisiana, and state whether or not they are the same receipts taken by you for the said cotton.

Please examine the papers shown you by the commissioner before whom your testimony is taken, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, and state whether or not the same are true copies of said receipts.

89 A. It is more particularly the duty of the shipping-clerk to take receipts. I only know and testify that the cotton was taken from the press, and was turned out, weighed, and marked for delivery to the C. C. Colson, but I have no personal knowledge whether it reached the Colson; it was the duty of the drayman to take it there. I know it was put on the drays and sent.

Nineteenth interrogatory. Q. Do you know any other matter or thing which may be for advantage of the claimants in this suit? If so, declare the same fully, as if thereunto specially interrogated.

A. I do not.

Second cross-interrogatory. Q. If you answer to third interrogatory that you were connected with Shippers' Press, state whether you are still there, and have you access now to the files of the Shippers' Press, or to the books of delivery and receipts thereof?

A. I am still connected with the Shippers' Press, and have access to the files and books referred to.

Third cross-interrogatory. Q. Look at the bill of lading for 139 bales of cotton per brig C. C. Colson, now shown you, dated 1st April, 1869. Now state whether the evidence you have given relates to the cotton named in that bill of lading of 1st April, 1869. If you have stated in your reply that you know of the delivery on 8th April, 1869, of 140 bales, or thereabouts, to the brig C. C. Colson, state the exact number of bales delivered. Do you know of the delivery of these bales to the brig C. C. Colson from your own knowledge, otherwise than by receipts? Did you see this cotton delivered to the brig Colson yourself? Was the cotton weighed at the Shippers' Press? Who weighed it? What were the marks originally on these cottons when you had it in the

90 Shippers' Press on account of H. W. Farley & Co.? Are not the marks of every lot of cotton entered on the books or files of the press when received?

Did you ship or deliver this cotton by the original marks by which it had been stored, if stored in the press previous to 8th April, 1869? If you did not deliver or ship this cotton by the original marks by which it had been stored, what were put on them? Were there any other marks on the bales except such as you have named? If so, give a list of them, and annex hereunto. Were not the weights of each bale marked thereon?

Had the marks that were on the bales when delivered by you been put on with a stencil-plate or a brush only? Were they marked with red ink, or paint, or black? Was this cotton you delivered all compressed, or any portion? If a portion, then state how many. In what description of bagging was the cotton put up, gunny cloth or hemp

bagging? If some of the bales were of both, state number of each. Was this lot of cotton put up with iron ties or ropes? If both, state how many bales of each.

If you have said you delivered this lot of cotton on an order, did you ever see the party whose name is attached to that order write his name? Did you see him write the order? If you answer nay, state, then, how you know the signature is correct.

A. I have looked at the bill of lading. I can only say that the number of bales delivered from the Shippers' Press were 140 bales of cotton; the bill of lading calls for 139 bales of cotton. The marks on the bill of lading are, O 63 bales of cotton, F 26 bales of cotton, L 36 bales of cotton, S 14 bales of cotton; the number and marks of those delivered were, O 63 bales of cotton, F 26 bales of cotton, L 35 bales of cotton, S 16; and I cannot state whether my testimony relates to that cotton described in the bill of lading. I have stated 140 bales of cotton were delivered from the Shippers' Press, and I know of my own knowledge that was the exact number. I did not see the cotton delivered to the C. C. Colson, nor do I testify to it.

91 There was kept at that time in the Shippers' Press a book called the transfer or black book, in which it was the usage in April, 1869, to enter the cotton in the press, when sold, the name of the seller in whose name the cotton was stored, and the name of the buyer, with the shipping marks put upon that sold. These entries were always made by the broker or his clerk at the time they presented the orders from the seller upon the press. It was the business of the broker or his clerk to make the entries.

There was also kept in the press at that time a book called the order-book, in which it was the usage in the press at that time to enter the order for the delivery of the cotton entered in the transfer or black book. These orders were entered by the broker or his clerk, acting for the buyer. It was the business of the broker or his clerk to make such entries. It designates the number of bales, the shipping marks, and the vessel to which the cotton is to be sent. All cotton delivered from the press must figure upon these books.

It was the universal usage at that time in the press to send all cotton to the vessel according to the directions in the order-book.

(Witness now produces these two books.)

I know that the entries in these books were made at the time they profess to be made. I find two entries in these books—one on the transfer-book and one on the order-book—referring to these 140 bales of cotton. The handwriting of these entries is that of H. P. Davis, clerk of A. E. Bignon. I know it to be his handwriting, because I saw him make the entries. The cotton was delivered upon it, and all parties concerned treated those entries as correct, and they have never been disputed. I decline to give the books up, because they are the original records of the press, but I furnish copies of those entries, and know them to be correct copies of said entries.

(The same are marked "K 1," "K 2," by me, commissioner, after comparing and verifying them with the original entries.)

92 The cotton was weighed at the Shippers' Press by Irvine Bradfute. The marks on this cotton when stored in the press for account of H. W. Farley & Co. were, E E 75, D D 40, J J 13, P 5, and L 5, E B 2, except the last two, which were stored for account of A. E. Bignon, broker. The cotton was not delivered by original marks when received. The marks put upon the cotton when delivered were O 63, F 26, L 35, and S 16 bales of cotton. No other marks were

on the bales. The marks were put on with a brush and black ink. All the cotton was compressed. I can't recollect whether the cotton was put up in gunny cloth or bagging, or whether with iron ties or ropes. I did not see the party sign his name to the order of H. W. Farley & Co. to which I have testified to, but I know the signatures thereto are correct, because H. W. Farley & Co. treated and acted on these orders as genuine, and because I have frequently seen other writings purporting to be signatures of the party who signed this order, which other entries they treated and recognized as their own. I know the cotton was sent from the press to be delivered to the Colson, because of the entries in the books to which I have referred.

The marks of cotton when received into the press are entered on the book which in April, 1869, was kept in the press and called the receiving-book. I produce said book, and know it to be the book kept in the press at that time. All the books I refer to come from the press.

I decline to give up that book because it is the original record of the press. I find in that book the following entries referring to these 140 bales of cotton. These entries I know were made at the time they profess to be made. I now furnish copies of these entries. I know they are true copies.

(The same are now marked "L," after being compared and verified with said entries by me, commissioner.)

Fourth cross-interrogatory. Q. If you state you took receipts, in answer to fifth interrogatory, state how you know that the receipts al-
93 luded to are from officers of the Colson.

At the time these papers were handed to you, did you then know the position and names of the various officers of the Colson? Were you acquainted with the signatures of these officers? Had you ever seen them write before?

If you answer nay, how then do you know of your own knowledge that the signature is correct?

If you did not see every bale delivered yourself at the Colson, and were not previously acquainted with the signatures of the officers, can you of your own knowledge swear it was delivered there?

You are asked to look at copies of some ten receipts, and state whether the same are true copies of said receipts.

How can you swear that they are true copies without having the originals to compare with them? Is the signature to the copies the same as in the original? If you answer nay, state wherein the difference is.

How many bales were called for on each receipt? How many bales did the whole ten receipts call for? Read your deposition, now shown you, sworn before Chas. Clarborne June 2d, 1869, and state whether your evidence given therein is correct and true. If not, wherein not? Please annex a copy hereto.

A. I have not testified to receipts or signatures thereto. I only testify that the cotton was sent from the press to be delivered to the Colson. I did not see the cotton delivered to the Colson.

P. J. McGRATH.

Examination taken, reduced to writing, subscribed and sworn to by the witness, this 11th day of November, 1870, before—

FRANK N. BUTLER,
Commissioner.

91 *Deposition of Irvine H. Bradfute, taken November* 14, 1870.

First interrogatory. What is your name, age, residence, and occupation, and what was your business and where did you reside in the month of April, 1869?

A. My name is Irvine Bradfute. I am 34 years of age. I reside in New Orleans, and at present am not occupied in any business. I resided in New Orleans in the month of April, 1869, and was then employed as the weighing-clerk for the firm of H. W. Farley & Co., cotton factors.

Third interrogatory. State whether or not you were connected with the Shippers' Press, New Orleans, in April, 1869. If yes, in what position? What were your duties?

A. I was not connected with the Shippers' Press in April, 1869; was the weigher for H. W. Farley & Co.

Fourth interrogatory. Q. Have you any knowledge of the delivery from the Shippers' Press, on or about the 8th day of April, 1869, of 140 bales of cotton, or thereabouts, to John C. Forbes or Waddy Thompson, or to either of them, or upon the order of either of them, or to the brig C. C. Colson, then lying in the port of New Orleans, or to any of its officers? If yes, state fully all that you know of such delivery. Give the date of the delivery, the number of and marks on the bales. State in whose name it was stored in said press previously to such delivery, and by whose order the delivery was made. Was the order in writing? If yes, annex it to your answer. If you decline to annex the original, state why, and annex a copy of it. State if you know the handwriting in which the order is signed. Whose handwriting is it, and how do you know the handwriting?

A. I have no knowledge of the delivery of the 140 bales of cot-
95 ton. I know that on the 6th of April, 1869, I weighed for H. W. Farley & Co. 140 bales of cotton in the Shippers' Press, which was turned out and weighed at that time for delivery. I recognize in the book now before me, belonging to H. W. Farley & Co., a statement of the number, marks, and weights of said bales.

That statement is in my handwriting, and was made by me at the time, and I then and now recognize it as correct; the statement shows both planters' marks and shippers' marks. (A copy of that statement is herewith filed and marked "D," and annexed to the testimony of H. W. Farley.) I recognize that as a correct copy of my statement in said book.

Fifth interrogatory. Q. Did you take receipts from the officers of said vessel, or any of them, for said cotton? Where are those receipts now, and where did you last see them? Please look at the ten papers now shown you by the clerk of the United States district court for the district of Louisiana, and state whether or not they are the same receipts taken by you for the said cotton. Please examine the papers shown you by the commissioner before whom your testimony is taken, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, and state whether or not the same are true copies of said receipts.

A. I took no receipts; I know nothing about them.

Nineteenth interrogatory. Q. Do you know any other matter or thing which may be for advantage of the claimants in this suit? If so, declare the same fully, as if thereunto specially interrogated.

A. I do not.

Second cross-interrogatory. Q. If you answer to third interrogatory that you were connected with Shippers' Press, state whether you are still

there, and have you access now to the files of the Shippers' Press or to the books of delivery and receipts thereof.

A. I was not in April, 1869, and am not connected with the Shippers' Press.

96 Third cross-interrogatory. Q. Look at the bill of lading for 139 bales cotton per brig C. C. Colson, now shown you, dated 1st April, 1869. Now state whether the evidence you have given relates to the cotton named in that bill of lading of 1st April, 1869. If you have stated in your reply that you know of the delivery on 8th April, 1869, of 140 bales, or thereabouts, to the brig C. C. Colson, state the exact number of bales delivered. Do you know of the delivery of these bales to the brig C. C. Colson from your own knowledge otherwise than by receipts?

Did you see this cotton delivered to the brig C. C. Colson yourself? Was the cotton weighed at the Shippers' Press? Who weighed it? What were the marks originally on these cottons when you had it in the Shippers' Press on account of H. W. Farley & Co.?

Are not the marks of every lot of cotton entered on the books or files of the press when received?

Did you ship or deliver this cotton by the original marks by which it had been stored, if stored, in the press previous to 8th April, 1869?

If you did not deliver or ship this cotton by the original marks by which it had been stored, what were put on them?

Were there any other marks on the bales except such as you have named? If so, give a list of them and annex hereunto. Were not the weights of each bale marked thereon? Had the marks that were on the bales when delivered by you been put on with a stencil-plate or brush only? Were they marked with red ink, or paint, or black?

Was this cotton you delivered all compressed or any portion? If a portion, then state how many.

In what description of bagging was this cotton put up, gunny cloth or hemp bagging? If some of the bales were of both, state number of each. Was this lot of cotton put up with iron ties or ropes?

97 If both, state how many bales of each. If you have said you delivered this lot of cotton on an order, did you ever see the party whose name is attached to that order write his name?

Did you see him write the order? If you answer nay, state how, then, do you know the signature is correct.

A. I know nothing of the bill of lading; can't say whether my testimony refers to cotton described in the bill of lading. I know nothing of the delivery of the cotton or what became of it after it was weighed. The 140 bales I speak of as weighed by me at the Shippers' Press was weighed by me there.

Original marks were 75 bales of cotton, E E; 13 bales of cotton, J J; 5 bales of cotton, L; 5 bales of cotton, P; 40 bales of cotton, D D; 2 bales of cotton, E B. Shippers' marks were as follows: O, 63 bales of cotton; L, 35 bales of cotton; F, 26 bales of cotton; S, 16 bales of cotton; but I know nothing of actual shipment; that was not my business.

The cotton was compressed, I presume. I can't recollect kind of bagging in which cotton was put up, or whether with ropes or iron ties. I know nothing of the order referred to in this cross-interrogatory.

Fourth cross-interrogatory. Q. If you state you took receipts, in answer to fifth interrogatory, state how you know that the receipts alluded to are from officers of the Colson.

At the time these papers were handed to you, did you then know the position and names of the various officers of the Colson?

Were you acquainted with the signatures of these officers? Had you ever seen them write before? If you answer nay, how then do you know of your own knowledge that the signature is correct?

If you did not see every bale delivered yourself at the Colson, and were not previously acquainted with the signatures of the officers, can you of your own knowledge swear it was delivered there?

98 You are asked to look at copies of some ten receipts, and state whether the same are true copies of said receipts.

How can you swear that they are true copies without having the originals to compare with them? Is the signature to the copies the same as in the originals?

If you answer nay, state wherein the difference is. How many bales were called for on each receipt?

How many bales did the whole ten receipts call for?

Read your deposition, now shown you, sworn before Chas. Clarborne, June 2, 1869, and state whether your evidence given therein is correct and true. If not, wherein not? Please annex a copy hereto.

A. I know nothing of any receipts. I did not take them; it was not my business.

IRVINE H. BRADFUTE.

Examination taken, reduced to writing, subscribed and sworn to by the witness, this 14th day of November, A. D. 1870, before—

FRANK N. BUTLER,
Commissioner.

Deposition of Henry P. Davis, taken Nov. 11, 1870.

First interrogatory. Q. What is your name, age, residence, and occupation, and what was your business and where did you reside in the month of April, 1869?

A. My name is Henry P. Davis. I reside in New Orleans; am 42 years of age, and by occupation am a cotton-classer; was cotton-classer in the employ of A. E. Bignon in April, 1869, and then resided in said city.

Fourth interrogatory. Have you any knowledge of the delivery from the Shippers' Press, on or about the 8th day of April, 1869, of 140

99 bales of cotton, or thereabouts, to John C. Forbes or Waddy Thompson, or to either of them, or upon the order of either of them, or to the brig C. C. Colson, then lying in the port of New Orleans, or to any of its officers?

If yes, state fully all that you know of such delivery. Give the date of the delivery, the number of and marks on the bales. State in whose name it was stored in said press previously to such delivery, and by whose order the delivery was made. Was the order in writing? If yes, annex it to your answer. If you decline to annex the original, state why, and annex a copy of it. State, if you know, the handwriting in which the order is signed. Whose handwriting is it, and how do you know the handwriting?

A. I know nothing of the delivery of the cotton; it was no part of my business to know anything of the delivery of the cotton.

I only know that the original order, signed H. W. Farley & Co., per J. H. Farley, is a genuine order; I know the signatures thereto, because I have seen other writings bearing the same signatures, which were treated and acted upon as genuine by the parties who signed the aforesaid order.

I brought that order to the Shippers' Press, according to custom, made the entry on the black or transfer-book which is now before me, and I also made the entry in the order-book which is now before me; I recognize and state that they were made at the time they represent.

I refer to the original entries on the books now in the possession of the press; I recognize the copies now presented to me by the commissioner as true and correct copies of those entries, having compared the same with the original entries.

Said copies are the same referred to by McGrath, and bear the same marks, viz: E E, K, K 2, and L; in usage the sale takes place first, and afterwards the entries, and then follows the actual sending from the press to the vessel; the order-book is intended to indicate the vessel to which the cotton is to be sent; if cotton is rejected, it occurs after the order in the transfer-book, and in practice such rejection is noted in the transfer-book, as in this instance; my connection with the cotton
100 ceases with these entries.

Fifth interrogatory. Q. Did you take receipts from the officers of said vessel, or any of them, for said cotton?

Where are those receipts now, and where did you last see them?

Please look at the ten papers now shown you by the clerk of the United States court for the district of Louisiana, and state whether or not they are the same receipts taken by you for the said cotton. Please examine the papers shown you by the commissioner before whom your testimony is taken, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, and state whether or not the same are true copies of said receipts.

A. I know nothing whatever of the receipts.

Third cross-interrogatory. Q. Look at the bill of lading for 139 bales cotton per brig C. C. Colson, now shown you, dated 1st April, 1869. Now state whether the evidence you have given relates to the cotton named in that bill of lading of 1st April, 1869? If you have stated in your reply that you know of the delivery on 8th April, 1869, of 140 bales, or thereabouts, to the brig C. C. Colson, state the exact number of bales delivered?

Do you know of the delivery of these bales to the brig C. C. Colson from your own knowledge otherwise than by receipts? Did you see this cotton delivered to the brig Colson yourself?

Was the cotton weighed at the Shippers' Press? Who weighed it? What were the marks originally on these cottons when you had it in the Shippers' Press on account of H. W. Farley & Co.? Are not the marks of every lot of cotton entered on the books or files of the press when received? Did you ship or deliver this cotton by the original marks by which it had been stored, if stored, in the press previous to 8th April, 1869? If you did not deliver or ship this cotton by the original marks by which it had been stored, what were put on
101 them? Were there any other marks on the bales except such as you have named?

If so, give a list of them and annex hereunto. Were not the weights of each bale marked thereon? Had the marks that were on the bales, when delivered by you, been put on with a stencil-plate or a brush only.

Were they marked with red ink, or paint, or black? Was this cotton you delivered all compressed, or any portion? If a portion, then state how many?

In what description of bagging was this cotton put up; gunny-cloth, or hemp bagging? If some of the bales were of both, state number of each?

Was this lot of cotton put up in iron ties or ropes? If both, state how many bales of each? If you have said you delivered this lot of cotton on an order; did you ever see the party whose name is attached to that order write his name?

Did you see him write the order? If you answer nay, state how, then, do you know the signature is correct?

I know nothing about the bill of lading. I can't state whether or not my testimony refers to the cotton described in that bill of lading. I know nothing of the delivery of this cotton to the brig C. C. Colson, but my entries call for its delivery to the Colson. The cotton was weighed at the press by Irvine Bradfute. I know nothing of the marks except from the order, except I see the marks on the order of the seler, and I know that the cotton when shipped bears the marks on the transfer-book. I don't know what marks are entered on the books or files of the press. I did not ship or deliver this cotton. I don't know what marks are entered on the books or files of the press. I did not ship or deliver this cotton. I don't know what marks were on the cotton other than the shipping-marks to which I have referred. The weights were not marked on this cotton.

I had the cotton marked with the shipping-mark with a brush and black ink. I can't state what kind of bagging the cotton was put up in. I know it was all compressed. I don't know whether it was bound in iron ties or ropes. I never delivered the cotton but as to the order that was brought to the press from H. W. Farley & Co. to which I
102 refer. I did not see the party sign his name thereto, but I have already said why I know the signatures are genuine to which I refer. I have not said that I delivered this cotton.

Fourth cross-interrogatory. Q. If you state you took receipts in answer to fifth interrogatory, state how you know that the receipts alluded to are from officers of the Colson. At the time these papers were handed to you, did you then know the position and names of the various officers of the Colson? Were you acquainted with the signatures of these officers?

Had you ever seen them write before? If you answer nay, how, then, do you know of your own knowledge that the signature is correct? If you did not see every bale delivered yourself at the Colson, and were not previously acquainted with the signatures of the officers, can you of your own knowledge swear it was delivered there?

You are asked to look at the copies of some ten receipts, and state whether the same are true copies of said receipts. How can you swear that they are true copies without having the original to compare with them? Is the signature to the copies the same as in the originals? If you answer nay, state wherein the difference is? How many bales, were called for on each receipt? How many bales did the whole ten receipts call for? Read your deposition now shown you sworn before Chas. Clarborne, June 2d, 1869, and state whether your evidence given therein is correct and true. If not, wherein not?

Please annex a copy hereto.

A. I have already stated I know nothing whatever about the receipts or the signatures thereto.

H. P. DAVIS.

Examination taken reduced to writing; and by the witness subscribed and sworn to this 11th day of November, A. D. 1870, before—

FRANK N. BUTLER,
Commissioner.

103 *Deposition of Patrick Ryan, taken November* 17, 1870.

First interrogatory. Q. What is your name, age, residence, and occupation, and what was your business and where did you reside in the month of April, 1869?

A. My name is Patrick Ryan; age is 40 years; residence, New Orleans; and now occupied as a manufacturer of soda-water. I resided in New Orleans in April, 1869, and then was a drayman.

Sixteenth interrogatory. Q. State whether you have any knowledge of the removal of 140 bales of cotton on or about the 8th of April, 1869, from the pier or wharf at or near which the brig C. C. Colson was lying in the port of New Orleans to any other place or vessel. If yes, to what place or vessel were they removed, and by whom and by whose directions? If you say that you removed them, please describe particularly all the circumstances connected with the transaction. State the position in which the cotton was lying immediately before its removal, especially in relation to the position of, and distance from, the said C. C. Colson; the orders or directions received by you in relation to its removal, and whether or not after its delivery by you it was remarked? If so, with what mark, and give, if you are able, the marks on the bales at the time of its removal.

A. I know of the removal of 140 bales of cotton on or about the 8th of April, 1869, from the wharf in New Orleans at which the brig C. C. Colson was then lying, to the steamer Lodona, which was then lying in New Orleans, bound for New York. I removed them upon wagons under my charge. John C. Forbes employed and directed me to remove them, and stated to me that he wished them removed from the Colson to be shipped by the Lodona, to which vessel he ordered me to remove them, which I did accordingly. Before being removed these bales
104 were lying upon the wharf at which the Colson was lying, in the usual position for cargo for the Colson. Some of the bales were within 10 feet of the Colson; some about 40 feet. The bales were scattered about on the wharf like other freight for the Colson. These 140 bales were remarked at the Lodona. Forbes told me at the time the bales were removed, they were to be remarked at the Lodona's wharf before being taken on board of her. I cannot state with what marks they were remarked, or the marks on them when removed. I delivered the bales at the wharf of the Lodona, to the person who was receiving cargo for her, and who received the 140 bales from me for her.

I delivered the bales to the Lodona on or about the 8th of April, 1869. I took receipts from the Lodona for the cotton. They are not now in my possession. I gave them to Forbes, the shipper. Forbes has left, and is not now in the city.

Fifteenth cross-interrogatory. Q. Look at the bill of lading hitherto filed of 139 bales of cotton, shipped by brig Colson on 1st April, 1869. Now, in the evidence you have given do you swear that the cotton you have testified to was on board of or alongside the brig Colson on 1st April, 1869? Was it or was it not?

In regard to the lot of cotton that you testify was removed, was it a lot of cotton that was on board the Colson on 1st April, 1869, or was it another lot?

You have been asked to state by whose direction the cotton you testify to was removed. Were those directions given in writing? If so, produce them, and annex them hereto. If you state you know where the lot of cotton that was removed was carried to, did you follow each load and bale? Was every bale in your sight until you delivered it there?

Did you remain at the place where it was removed to until every bale was put on board?

105 Will you swear that none of it was afterwards carted away again to another vessel after you saw it removed? Do you know it of your own personal knowledge? Are you in the habit of taking a memorandum of any cotton that you remarked? If so, on what ground and for what reason?

If you are not in the habit, why did you do it in this case?

Did you make a memorandum of the marks? If so, produce it and annex it hereto.

How many bales did you see yourself the mark put on?

Did you count each bale as it was remarked? How many men were engaged in remarking it?

Did you follow them around and see the mark put on every bale. Was the mark put on with a stencil or a brush?

Where were the bales marked, on the head or on the side?

Were they marked in red or black? Was there no other cotton of the same mark as you state this was remarked on the wharf where you removed it to?

If you answer yea, could you not have made an error in counting this? Will you swear that there was no other cotton put on the wharf where you removed it to, bearing the same mark?

How many bales were there removed? How many bales did you yourself actually remove? Were the bales compressed or not? Had they hemp or gunny bagging on; if of both, how many bales of each?

Had the sample-holes patches over them, or were they exposed to view?

A. I have looked at the bill of lading. I do not swear that the cotton to which I have testified was on board or alongside the Colson on the 1st of April, 1869. It was not on board of her at that time to my knowledge.

I do not know what cotton was on board of that vessel on the 1st of April, 1869; I did not know of the cotton to which I testify until the 8th of April, 1869, and cannot say whether it was on board the Colson on the 1st of April, 1869, or whether it was ever on board.

106 The instructions to remove the cotton to which I have testified were not in writing, but verbal. I did not follow each load and bale of the cotton removed, but I went along with the wagons that removed it. Each bale was not in my sight the whole time until delivered to the Lodona. I did not remain at the place where it was removed until every bale was put on board, but I know the 140 bales were received at the Lodona by the person employed on her to receive freight, who received the 140 bales of cotton for her. I can swear that the 140 bales of cotton removed from the Colson were not carted away to any other vessel but the Lodona from the time of its removal from the Colson to its delivery to the Lodona. That delivery is to my personal knowledge, as it was my business, and I performed it.

I cannot swear that no portion of it was not carted away after being delivered to the Lodona, but I have no idea nor knowledge that any of it was so carted away. I am not in the habit of taking memorandums of cotton remarked by me, for I never remark any. I do not remember any of the marks remarked on this cotton, and have given no testimony as to those marks. I saw the remarking of this lot of 140 bales of cotton going on at the wharf of the Lodona after I removed the cotton, but I cannot say on how many bales I saw the marks put. I did not count each bale as it was remarked. I recollect seeing but one man

engaged in the remarking, and he was a person I think connected with the Lodona. I did not follow the man around to see the mark put upon each bale. The remarking that I saw going on was put on with a brush. I cannot say whether the bales of cotton were remarked on the head or on the edge. They were remarked with black ink, I think, but I did not notice it particularly, as I do not testify to the marks on the 140 bales of cotton. I cannot say whether there was any other cotton of the same mark. I do not recollect and cannot say whether there was any other cotton then on the wharf when this remarking was going
107 on. The number of bales remarked from the Colson to the Lodona was 140. I actually removed no cotton; it was all removed on the wagons in my charge, and I went along with the wagons and superintended the removal.

I received from Forbes $35 for removing, and he paid me at the rate of 25c. a bale.

The cotton was all compressed in India bagging, as well as I remember; it may have been some other bagging. I cannot swear there was no other cotton put on the wharf when I removed the 140 bales bearing the same mark, but I know of none there other than 140 bales of cotton.

P. RYAN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, the 17th day of November, 1870, before—

FRANK N. BUTLER,
Commissioner.

Deposition of Patrick McConnon, taken November 17, 1870.

First interrogatory. Q. What is your name, age, residence, and occupation; and what was your business and where did you reside in the month of April, 1869?

A. My name is Patrick McConnon. I am about 35 years of age. I reside in New Orleans; am a drayman. I was drayman of the Shippers' Press in April, 1869, and resided in New Orleans.

First additional interrogatory. Q. Were you in April, 1869, employed by the Shippers' Press, New Orleans, as a drayman?

If so, have you any knowledge of the hauling of one hundred
108 and forty bales of cotton from that press to the brig C. C. Colson on or about April 8th, 1869? If yes, state fully all that you know in relation thereto? What part of it did you yourself haul, if any? To whom did you deliver it?

Did you take receipts for it? If so, what did you do with the receipts? Look at the ten papers purporting to be receipts therefor, shown you by the clerk of the United States district court, and say if those papers or any of them, and, if any, which, are receipts taken by you upon the delivery of any of said cotton, and whether the cotton so delivered by you corresponded in the number of bales and the marks on the bales with the bales mentioned in said receipts.

Did you see said receipts or any of them signed?

If so, which and by whom were they signed? Who was the person or persons who signed them?

Where was he or they when they signed the receipts? Where and how near to the Colson was the cotton delivered? What position or office, if any, did the person or persons signing said receipts occupy in the Colson, and how do you know what position or office he or they held?

A. I was the drayman of the Shippers' Press in April, 1869.

I only know that I hauled one load of cotton to the Colson from the Shippers' Press on or about April 8, 1869, about 14 bales, which I dumped on the wharf where the Colson was taking cargo. I had a driver hauling for me at the same time who hauled at the same time that I did some cotton from the Shippers' Press to the Colson. I don't know how much he hauled. I know there were about ten or twelve wagons hauling cotton from Shippers' Press to the Colson at the time I hauled. I took receipt for the cotton that I hauled, brought it back to the Shippers' Press, and delivered it to the clerk of the press. I have looked at the ten papers shown me as receipts, but I cannot say which covers the cotton that I hauled. I can't recollect at this length of time.

100 The receipt that I took corresponds with any one of those now shown me; they were all alike in general appearance. The receipt that I received was signed by the person representing himself as mate of the Colson and receiving cotton for her. I don't recollect his name, nor do I know what office he held on the Colson, but I know he was acting for her in receiving freight.

Second additional interrogatory. Q. What do you know as to the delivery of any of said one hundred and forty bales to the Colson by any other drayman?

If anything, state by what other drayman, and state all that you know in relation to such delivery.

A. I do know there were a number of drays, 12 or 13 in number, that were employed in hauling cotton to the Colson from the Shippers' Press; they would load, not with full loads, but with enough to proportion the loads and make the lot come out straight. From the number of drays employed and the time consumed, I am satisfied there were 140 bales of cotton shipped from the Shippers' Press to the Colson on or about the 8th of April, 1869, and that that cotton was delivered to the Colson. John Smith is the name of one that was engaged. Some are dead.

Third additional interrogatory. Q. Do you know any other matter or thing that may tend to the advantage of the claimants in this suit? If so, declare the same fully, as if thereunto specially interrogated.

A. I know of nothing else.

First cross-interrogatory. Q. What is your name, age, and occupation and residence?

A. I have already stated my name, age, residence and occupation, to which I now refer.

Second cross-interrogatory. Q. Look at the bill lading herewith

110 shown you for 139 bales cotton per brig Colson, dated 1st April, 1869, and state whether the evidence you have given relates to these 139 bales purporting to be shipped on 1st April, 1869, or previously, on the Colson.

Did you, on 1st April, 1869, or previously, haul any cotton to the Colson? If you answer yea, that you have any knowledge of the hauling of 140 bales cotton from the press to the brig C. C. Colson on 8th April, 1869, state what circumstances impressed it on your memory?

Can you identify and swear to any receipts that have passed through your hands some 18 months afterwards? If you hauled any of the cotton inquired of, do you recollect the marks? If so, state how many marks they were.

How many bales of each mark were in each separate load? Look at the ten receipts now shown you, numbered from 1 to 10, and state what numbered receipt you got from your load or loads. Only state what number of the receipt for cotton that you actually hauled by dray or

truck you had charge of. Can you swear these receipts shown you are exact copies of the original ones?

Had the original ones any portion of the receipt printed? If so, state what portion. How were they signed—in ink or pencil? Did you haul no other cotton from the Shippers' Press on 8th April, 1869; and, if so, where?

To how many of these ten receipts shown you did you see the officer write his name? To how many will you positively swear you saw him sign his name? Did he sign his name on the deck of the Colson or on the wharf?

Do you know of your own knowledge that the persons who signed these receipts were officers of the Colson, or were you only told so?

Where were these bales of cotton marked, on the head or side of the bale? Were they marked with a brush or stencil-plate?

Were they marked in red, blue, or black ink or paint?

Were the weights marked on each bale? Were there any other marks on the bales except such as you have named? If you answer yea, state them.

111 Were the bales compressed or not? If only a portion was compressed, state how many.

What description of bagging had these bales on, gunny-cloth or hemp bagging? If some of both, state how many of each.

How were the bales fastened, with rope or iron ties? How many bales of each? Were the sample-holes of these bales open, or had they patches put over them?

A. I have looked at the bill of lading. I can't say whether my testimony refers to the cotton described in the bill of lading.

I did not haul any cotton on the 1st April, 1869, or previously, to the Colson. The fact of hauling cotton on the 8th of April, 1869, is impressed on my memory because I recollect it, and I hauled no other lot of cotton to the Colson. I can't identify or swear to any receipt that passed through my hands 18 months ago. I can't recollect the marks on the cotton I hauled or upon any of the cotton that was hauled. I have looked at the receipts, and can't tell which I got for my load. I don't know whether the receipts shown me are copies or originals. The original receipt which I took had the portion printed like those shown me. I can't say how they were signed, in ink or pencil. I've no doubt I hauled other cotton from the Shippers' Press on the 8th of April, 1869, but I can t say how much or where I hauled it. I can't recollect at this time whether the one receipt which I got was signed in my presence or not. I only know I got the receipt when I delivered the cotton. I don't know where it was signed, either on the deck of the Colson or on the wharf; it must have been on the wharf. I only know the person who signed my receipt was acting as the officer to receive freight for the Colson. I have no other knowledge as to his position, and no one told me anything about him. These cottons, I believe, were marked on the side, as cotton-marks for shipment are generally on the side.

I didn't see the cotton marked, and cannot tell with what it was
112 marked. I believe they were marked with black marking-ink. I can't recollect whether the weights were marked on the bales. All the bales were compressed. The usual bagging was on this cotton; I don't know whether hemp or gunny-cloth. I don't know how they were fastened. I believe with iron ties. I can't tell whether the sample-holes were patched or opened.

Third cross-interrogatory. Q. You are asked to state what you know of the delivery of any said 140 bales to the Colson by any other dray-

man. Do you know of your own personal knowledge? Did you see the cotton delivered? Did you see the receipt signed? How many bales of each mark did this other drayman deliver? Look at the ten receipts before shown you, and point out what numbered receipts he got for his load.

How many bales did you yourself actually count and see delivered?

A. I only know that I saw the other draymen hauling from the press to the Colson, but whether they delivered it there or not I can't say. I know I delivered the 14 bales that I hauled. I don't know what marks were on the cotton nor what marks on the bales delivered by the other draymen, nor can I tell anything about the receipts the other draymen got.

Fourth cross-interrogatory. Q. Can you read? Can you write?

A. I can read and I can write.

Fifth cross-interrogatory. Q. Do you know any other matter or thing which may tend to the benefit of the libellants herein? If so, disclose the same fully, as though specifically interrogated thereon.

A. Nothing.

PATRICK McCONNON.

113 Examination taken, reduced to writing, and by the witness subscribed and sworn to, this 17th day of November, A. D. 1870, before—

FRANK N. BUTLER,
Commissioner.

Deposition of John Smith, taken November 17, 1870.

First interrogatory. Q. What is your name, age, residence, and occupation, and what was your business and where did you reside in the month of April, 1869?

A. My name is John Smith. I am about 40 years of age; reside in New Orleans. I am a drayman. I was living here in the employ of the Shippers' Press in April, 1869.

First additional interrogatory. Q. Were you in April, 1869, employed by the Shippers' Press, New Orleans, as drayman? If so, have you any knowledge of the hauling of one hundred and forty bales of cotton from that press to the brig C. C. Colson, on or about April 8th, 1869?

If yes, state fully all that you know in relation thereto. What part of it did you yourself haul, if any? To whom did you deliver it? Did you take receipts for it? If so, what did you do with the receipts? Look at the ten papers purporting to be receipts therefor, shown you by the clerk of the United States district court, and say if those papers, or any of them, and, if any, which, are receipts taken by you upon the delivery of any of said cotton, and whether the cotton so delivered by you corresponded in the number of bales and the marks on the bales with the bales mentioned in said receipts. Did you see

114 said receipts or any of them signed? If so, which, and by whom were they signed? Who was the person or persons who signed them? Where was he or they when they signed the receipts? Where and how near to the Colson was the cotton delivered? What position or office, if any, did the person or persons signing said receipts occupy in the Colson, and how do you know what position or office he or they held?

A. I had four drays employed at the Shippers' Press in April, 1869. I know that on or about the 8th of April, 1869, the four drays hauled

cotton from the Shippers' Press to the Colson. I am sure that my drays hauled 56 bales from the Shippers' Press to the Colson at that time, and there were other drays hauling cotton to the Colson at that time. I know my drivers took receipts for the cotton, but I can't identify any of them, nor can I state by whom they were signed at the Colson, where the cotton was delivered. I don't know what position the person occupied who signed the receipts.

Second additional interrogatory. Q. What do you know as to the delivery of any of said one hundred and forty bales to the Colson by any other drayman? If anything, state what other drayman, and state all that you know in relation to such delivery.

A. I can't state the names of all the drivers engaged in hauling the cotton from the press to the Colson. Some of them are dead. McConnon is the name of one that was engaged.

Third additional interrogatory. Q. Do you know of any other matter or thing that may tend to the advantage of the claimants in this suit? If so, declare the same fully as if thereunto specially interrogated.

A. I know nothing further.

First cross-interrogatory. Q. What is your name, age, and occupation and residence?

115 A. I have already stated my age, occupation, and residence.

Second cross-interrogatory. Q. Look at the bill of lading herewith shown you for 139 bales cotton, per brig Colson, dated 1st April, 1869, and state whether the evidence you have given relates to these 139 bales cotton, purporting to be shipped on 1st April, 1869, or previously, on the Colson.

Did you on 1st April, 1869, or previously, haul any cotton to the Colson?

If you answer yea, that you have any knowledge of the hauling of 140 bales of cotton from the press to the brig C. C. Colson on 9th April, 1869, state what circumstance impressed it on your memory.

Can you identify and swear to any receipts that have passed through your hands some eighteen months afterwards?

If you hauled any of the cotton inquired of, do you recollect the marks? if so, state how many marks they were.

How many bales of each mark were in each separate load?

Look at the ten receipts now shown you, numbered from 1 to 10, and state what numbered receipts you got from your load or loads. Only state what number of the receipt for cotton that you actually hauled by dray or truck that you had charge of.

Can you swear these receipts shown you are exact copies of the original ones?

Had the original ones any portion of the receipt printed? if so, state what portion.

How were they signed, in ink or pencil?

Did you haul no other cotton from the Shippers' Press on 8th April, 1869; and, if so, where?

To how many of these ten receipts shown you did you see the officer write his name?

To how many will you positively swear you saw him sign his

116 name? Did he sign his name on the deck of the Colson or on the wharf?

Do you know of your own knowledge that the persons who signed these receipts were officers of the Colson, or were you only told so?

Where were these bales of cotton marked, on the head or side of the bale? Were they marked with a brush or stencil-plate?

Were they marked in red, blue, or black ink, or paint?

Were the weights marked on each bale? Were there any other marks on the bales except such as you have named? If you answer yea, state them.

Were the bales compressed or not? If only a portion was compressed, state how many.

What description of bagging had these bales on, gunny-cloth or hemp bagging? If some of both, state how many of each.

How were the bales fastened, with rope or iron ties. How many bales of each?

Were the sample-holes of these bales open, or had they patches put over them?

A. I have looked at the bill of lading; can't say whether my testimony refers to that stated in the bill of lading; I hauled nothing on the 1st of April, 1869, or previously, to the Colson; I can't recollect what circumstance impressed the hauling to the Colson upon my memory; I can't identify and swear to any receipts; I remember nothing about marks, and do not testify to marks at all; can't swear whether the receipts shown me are originals or copies, or how they were signed; the originals had the portion printed like those shown me; I didn't see any of the receipts signed; cotton is always marked on edge when shipped; I don't remember anything special about the marks on these cottons; don't know with what they were marked; I believe they were marked with black ink; bales were all compressed; I don't know whether the weights were marked on the bales or not; I can't say what kind of bagging was on these bales; I believe the bales were fastened with iron ties; don't know whether sample-holes were closed or not.

117 Third cross-interrogatory: Q. You are asked to state what you know of the delivery of any said 140 bales to the Colson by any other drayman? Do you know it of your own personal knowledge? Did you see the cotton delivered? Did you see the receipts signed? How many bales of each mark did this other drayman deliver? Look at the ten receipts before shown you, and point out what numbered receipt he got for his load? How many bales did you yourself actually count and see delivered?

A. I only know that other draymen were hauling cotton from the Shippers' Press to the Colson on or about April 8th, 1869, but I don't know of my personal knowledge that they delivered any cotton. I cannot state accurately the number of bales hauled from the press to the Colson, but I suppose from the number of drays employed and the time consumed there were fully 140 bales. My drays delivered 56 bales. I did not actually count these 56 bales, but I saw the cotton on the drays, and know the number assigned to each dray to be 14 bales. I can't point out any receipt as received by the drayman for his load.

Fourth cross-interrogatory: Can you read? Can you write?

A. I can read and I can write.

Fifth cross-interrogatory: Q. Do you know any other matter or thing which may tend to the benefit of the libellants herein? If so, disclose the same fully, as though specifically interrogated thereon.

A. Nothing.

JOHN SMITH.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this seventeenth day of November, 1870, before—

FRANK N. BUTLER,
Commissioner.

118 *Deposition of E. P. Rareshide, taken Nov.* 18, 1870.

First interrogatory: Q. What is your name, age, residence, and occupation, and what was your business, and where did you reside in the month of April, 1869?

A. My name is E. P. Rareshide. I am 38 years of age; residence, New Orleans; by occupation a ship-agent; was so employed in April, 1869, and resided in said city.

Second interrogatory: Q. Have you any knowledge of any shipment of any cotton per Lodona by John C. Forbes in April, 1869? If yea, how many lots did he ship, and what were they worth?

A. John C. Forbes shipped on the Lodona hence, per New York, on her trip when she left here on the 13th April, 1869, 165 bales of cotton; that was the only lot he shipped.

Third interrogatory: Q. Who was the agent of the Lodona in April, 1869? What is the usage in signing bills of lading in respect to the receipts in which they are signed?

A. My firm of G. A. Fosdick & Co. were agents for the Lodona in April, 1869. Bills of lading are signed at the agent's office according to receipts.

Fourth interrogatory: Q. Where are the receipts? Can you produce them? Have you searched for them?

A. The receipts cannot be found. They are either lost or mislaid, or are in possession of the steamer. I cannot produce them. I have made diligent search for them in our office and cannot find them.

Fifth cross-interrogatory: Q. Do you know any other matter or thing which may tend to the benefit of the claimants herein? If
119 so, disclose the same fully, as though specifically interrogated thereon?

A. I do not know any other fact or circumstance that would benefit claimant in this cause that I am aware of.

E. P. RARESHIDE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 18th day of November, 1870, before—

FRANK N. BUTLER,
Commissioner.

Libellants then read the following depositions from the New Orleans commission:

Deposition of A. E. Bignon, taken Nov. 14, 1870.

First interrogatory. Q. What is your name, age, residence, and occupation?

A. My name is A. E. Bignon. I am 34 years of age; reside in New Orleans, and I am by occupation a cotton broker.

Second interrogatory. Q. Are you acquainted with Waddy Thompson? Are you acquainted with John C. Forbes? Have you had any business relations or transactions either for yourself or acting for another with one or both?

A. I am acquainted with Waddy Thompson and also John C. Forbes. I have purchased cotton for or upon the order of Waddy Thompson on account of John C. Forbes. The only business relation or transaction that I have had with either or both of them has been in the purchase of cotton as broker.

Third interrogatory. Q. If, in answer to the first interrogatory, you state you are a broker, did you act as broker for Waddy Thompson? Were you in the habit of purchasing cotton for him or selling to him?

120

A. I acted as a broker for Waddy Thompson. I was in the habit of purchasing cotton for him.

Fifth interrogatory. Q. Look at the bill of lading of 139 bales of cotton per brig C. C. Colson, purporting to be shipped 1st April, 1869. Please examine the marks in the bill of lading, also the weights, and state whether on 1st April, 1869, or previously, you, acting for yourself, or as clerk for another, purchased for or sold to Waddy Thompson said lot of cotton.

A. No; I never bought the cotton referred to in this bill of lading on the 1st of April, or previously, but I did on the 5th day of April purchase 140 bales of cotton, containing the following marks:

O 63 bales.
F 26 "
L 35 "
S 16 "

These were the marks I shipped the cotton by; the cotton had other marks when I purchased.

Sixth interrogatory. Q. Did you, as broker, (or as clerk to a broker,) buy for or sell to Waddy Thompson any lot of cotton on the fifth of April, 1869? If so, state the number of bales and of whom purchased. What were the marks on the bales at the time you purchased it and whilst it was in possession of H. W. Farley & Co., if ever in their possession? Were any of these bales rejected and not delivered to Waddy Thompson? If any bale or bales were rejected, and not delivered to Waddy Thompson, state what was the mark or marks on the bales not delivered. Why were the rejections made? State how many bales were actually delivered to Waddy Thompson. State the exact number of bales of each mark delivered, such as it was marked when you purchased it or sold it. Now state the number of pounds that the cotton actually received and paid for by you or Waddy Thompson weighed. Name also the price of this cotton. Furnish a duplicate weigher's certificate of the separate weight of each bale, and attach it hereunto.

121

A. I did, as broker for Waddy Thompson, on the 5th of April, 1869, purchase 140 bales of cotton, marked at the time I purchased it as follows:

E E, 75 bales.
D D, 40 "
J J, 13 "
P, 5 "
L, 5 "
E B, 2 "

purchased of H. W. Farley & Co., and marked as above when stored in the Shippers' Press for account of H. W. Farley & Co. I will state the list originally purchased of H. W Farley & Co. was 141 bales; but one bale was rejected on account of being unmerchantable. The mark on the bale rejected was E E, the number of which mark on the original list was 76 bales. Witness now produces the original invoice, showing the purchase of the 140 bales, the shipping-marks, the weights, and the price, as a full answer to all the questions propounded in relation thereto.

It was procured by witness from the custody of Waddy Thompson, and now makes it a part of this answer, and marked by me, commissioner, "I." I have stated the exact number of bales delivered was 140 to Waddy Thompson. The invoice shows the number of pounds, the shipping-marks, and I have given the planters' marks. Invoice shows also the price of the cotton. Witness now produces a duplicate certificate of the weights, which is hereto annexed by me, commissioner, and marked "D."

Cross-examined on behalf of claimants:

122 Q. Have you any knowledge of the delivery from the Shippers' Press on or about the 8th day of April, 1869, of 140 bales of cotton, or thereabouts, to John C. Forbes or Waddy Thompson, or to either of them, or upon the order of either of them, or to the brig C. C. Colson, then lying in the port of New Orleans, or to any of its officers? If yes, state fully all that you know of such delivery. Give the date of the delivery, the number of and marks on the bales. State in whose name it was stored in said press previously to such delivery, and by whose order the delivery was made. Was the order in writing? If yes, annex it to your answer. If you decline to annex the original, state why, and annex a copy of it. State if you know the handwriting in which the order is signed. Whose handwriting is it, and how do you know the handwriting?

A. I have knowledge of the delivery of 140 bales on the 8th day of April, 1870, from the Shippers' Press to the brig C. C. Colson. These cottons were marked "O," 63, "F," 26, "L," 35, and "S," 16. This cotton was stored previously in the Shippers' Press in the name of H. W. Farley & Co. These 140 bales were delivered from the Shippers' Press upon the order of H. W. Farley & Co. The original of that order is now produced to me by the clerk of the Shippers' Press, and I recognize it to be the original order on which the cotton was delivered. (A copy of that order, marked , is herewith filed and marked by me, commissioner, "E E," and annexed to the testimony of H. W. Farley.)

Q. Did you take receipts from the officers of said vessel, or any of them, for said cotton? Where are those receipts now, and where did you last see them? Please look at the ten papers now shown you by the clerk of the United States district court for the district of Louisiana, and state whether or not they are the same receipts taken by you for the said cotton. Please examine the papers shown you by the commissioner before whom your testimony is taken, numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, and state whether or not the same are true copies of said receipts.

123 A. I did not take any receipts; it was not my business. I ordered the cotton to be sent to the Colson.

Q. Do you know any other matter or thing which may be for advantage of the claimants in this suit? If so, declare the same fully, as if thereunto specially interrogated.

A. I do not.

Re-examined on behalf of libellants:

Q. Look at the bill of lading for 139 bales of cotton, per brig C. C. Colson, now shown you, dated 1st April, 1869. Now state whether the evidence you have given relates to the cotton named in that bill of lading of 1st April, 1869. If you have stated in your reply that you know of the delivery on 8th April, 1869, of 140 bales, or thereabouts, to the brig C. C. Colson, state the exact number of bales delivered. Do you

know of the delivery of these bales to the brig C. C. Colson from your own knowledge, otherwise than by receipts? Did you see this cotton delivered to the brig Colson yourself? Was the cotton weighed at the Shippers' Press? Who weighed it? What were the marks originally on these cottons when you had it in the Shippers' Press on account of H. W. Farley & Co.? Are not the marks of every lot of cotton entered on the books or files of the press when received? Did you ship or deliver this cotton by the original marks by which it had been stored, if stored in the press previous to 8th April, 1869? If you did not deliver or ship this cotton by the original marks by which it had been stored, what were put on them? Were there any other marks on the bales except such as you have named? If so, give a list of them, and annex hereunto? Were not the weights of each bale marked thereon? Had the marks that were on the bales when delivered by you been put on with a stencil-plate or a brush only? Were they marked with red ink, black, or paint? Was this cotton you delivered all compressed, or any portion? If a portion, then state how many. In what description of bagging was this cotton put up, gunny-cloth or hemp bagging? If some of the bales were of both, state number of each. Was this lot
124 of cotton put up with iron ties or ropes? If both, state how many bales of each. If you have said you delivered this lot of cotton on an order, did you ever see the party whose name is attached to that order write his name? Did you see him write the order? If you answer nay, state then how you know the signature is correct?

A. I know nothing of the bill of lading. I have stated the shipping-marks on this cotton, and that's all I can say about the question whether the bill of lading embraces the cotton. I did not see this cotton delivered myself, but I do know it was delivered from two entries, one in the transfer-book and one in the order-book of the Shippers' Press, said books and said original entries in them being now before me, true copies of said entries being herewith attached, marked by me, commissioner, "K K;" these entries are in the handwriting of H. B. Davis, who at the time those entries were made was my clerk. These books were kept at the time in the cotton-press. The course of business was for the broker making the purchase to enter on the transfer-book the transfer from seller to buyer, and on the order-book the delivery of the cotton, the ship to which sent or its destination, in the form in which the entries marked "K 1," "K 2" were made; these entries were made in due course of business, and from them I am unable to state that the 140 bales of cotton were delivered to the Colson. The cotton was weighed at the press by Irvine Bradfute. I have given the marks originally on this cotton when it was in the Shippers' Press for account of H. W. Farley & Co. The marks on the cotton when received are on the books of the press; I did not ship the cotton by the original marks but by the shipping-marks which I have given. The weights were not on the cotton. The marks were put on by a brush with black ink. The cotton was all compressed. Don't know the description of bagging or whether it was put up with iron ties or ropes. I never saw the party who signed the order of H. W. Farley and Co., upon which the 140 bales of cotton was delivered, write, but I know that the order now produced is the original order given to me by H. W. Farley & Co., and on which the cotton was delivered.

125 Q. If you state you took receipts in answer to fifth interrogatory, state how you know that the receipts alluded to are from officers of the Colson. At the time these papers were handed to you, did you then know the position and names of the various officers of the

Colson? Were you acquainted with the signatures of these officers? Had you ever seen them write before? If you answer nay, how then do you know of your own knowledge that the signature is correct? If you did not see every bale delivered yourself at the Colson, and were not previously acquainted with the signatures of the officers, can you of your own knowledge swear it was delivered there? You are asked to look at copies of some ten receipts, and state whether the same are true copies of said receipts. How can you swear that they are true copies without having the originals to compare with them? Is the signature to the copies the same as in the original? If you answer nay, state wherein the difference is. How many bales were called for on each receipt? How many bales did the whole ten receipts call for? Read your deposition now shown you, sworn before Chas. Claiborne June 2d, 1869, and state whether your evidence given therein is correct and true. If not, wherein not? Please annex a copy hereto.

A. I never took any receipts for the cotton, and know nothing of the receipts or the signatures thereto. I did not see the cotton delivered to the Colson, nor do I know of my own knowledge that it was delivered to the Colson; but I do know that it was sent from the press on the order of H. W. Farley & Co. to be delivered to the Colson, and I ordered it to be delivered to the Colson.

A. E. BIGNON.

Examination taken, reduced to writing, subscribed and sworn to November 14th, 1870, before—

FRANK N. BUTLER,
Commissioner.

126 Claimants then read from New Orleans commission—

Deposition of Henry C. Miller, taken Nov. 16, 1870.

He saith in answer to general interrogatory:

A. I was the attorney for W. J. Porter & Co. in the suit of W. J. Porter & Co. vs. The brig C. C. Colson in the United States district court for the district of Louisiana; in that case the proceeds collected by the libellants, W. J. Porter & Co., under the decree was $5,697.62, the total proceeds of the sale of the brig, less costs of court, of the marshal of the sale; that amount, $5,697.62, was collected by me as their attorney. I was also the attorney of W. J. Porter & Co. in the suit of W. J. Porter & Co. vs. F. J. Herron, United States marshal, in the United States court; in that suit Porter & Co. also had a decree in their favor, under which there was paid me as their attorney $15,374.04, the proceeds of the cotton the subject of this suit, less costs; prior to these recoveries an arrangement had been made by me, with the sanction of my clients, with the attorneys here of Schaefer & Co., that all funds realized or to be realized in the above suit, brought by W. J. Porter & Co., should be divided pro rata between Schaefer & Co. and my clients; upon this basis my clients held bills of lading for 464 bales of cotton per Colson, on which they had paid bills of exchange amounting to $103,754.83, and Schaefer & Co. held one bill of lading for 121 bales of cotton per Colson, on which they had paid bill of exchange for $12,525.21, and each should take pro rata in proportion to their respective debts; this agreement was made to avoid separate suits, and to avoid any contest between Schaefer & Co. and Porter & Co., as holders of bills of lading calling for cotton on the brig Colson, and to secure to each a pro rata share of

the recoveries, irrespective of the name of the party in whose favor decrees should be rendered; under that agreement I paid Semmes & Mott, of the proceeds of the brig C. C. Colson, recovered by Por-
127 ter & Co., $609.20, and out of the proceeds of the cotton recovered in the case of Porter & Co. vs. Herron, marshal, I paid Semmes & Mott, attorneys for Schaefer & Co., $1,641.73 as the pro rata of Schaefer & Co. in each case. I append copies of the receipts of Semmes & Mott for said amounts; the originals are in my possession, and I decline giving them up as they are my vouchers; that of $609.20 is signed by Mr. Mott, and that of $1,641.73 is signed by Mr. Semmes. I know both their signatures from having often seen each of them write their own and their firm names. (Which copies are hereto annexed by me, commissioner, and marked "O 1," "O 2.")

HENRY C. MILLER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to this 16th day of November, A. D. 1870, before me.

FRANK N. BUTLER,
Commissioner.

Claimants then read from New Orleans commission:

Deposition of Charles Clarborne, taken November 14, 1870.

First interrogatory. What is your name, age, residence and occupation, and what was your business and where did you reside in the month of April, 1869?

A. My name is Charles Clarborne; am 55 years of age; reside in New Orleans, and am by occupation clerk of the United States district court for the district of Louisiana. I was engaged as above stated and resided in the city aforesaid in the month of April, 1869.

Seventeenth interrogatory. Q. Have you in your possession, as
128 clerk of the United States district court, a paper purporting to be a bill of lading for 139 bales of cotton by the brig C. C. Colson, dated April 1, 1869, signed by Julius A. Pratt; also, a paper purporting to be a bill of lading for one bale of cotton by the same vessel, dated April 8, 1869, signed by said Pratt; also, a paper purporting to be a draft drawn, dated April 1st, 1869, by J. C. Forbes on W. J. Porter & Co., New York, for five thousand dollars, payable at sight to said Forbes' order; also, a paper purporting to be a draft, dated April 1st, 1869, drawn by said Forbes on said Porter & Co., for $6,243$\frac{27}{100}$, payable at sight to said Forbes' order; also, a paper purporting to be a draft, dated April 3, 1869, drawn by said Forbes on said Porter & Co., for $4,000, payable at sight to said Forbes' order; also, certain papers purporting to be receipts by F. M. Roby and one Keenan, officers of the said vessel C. C. Colson, for certain cotton delivered to the said vessel on or about the 8th day of April, 1869, from the Shippers' Press, New Orleans? If you have said papers, or any of them, please annex them to your deposition; or, if you decline to do so, annex copies of them, and of all endorsements thereon, and state why you decline to annex the originals and how they came into your custody. State whether or not the copies annexed by you are true copies of the same.

A. I have in my possession, as clerk of the United States district court, a paper purporting to be a bill of lading for 139 bales of cotton by the brig C. C. Colson, dated April 1st, 1869, signed by Julius A. Pratt. I have also in my possession, as the clerk aforesaid, a paper purporting to

be a bill of lading for one bale of cotton by the same vessel, dated April 8th, 1869, signed by said Pratt. I have also in my possession, in said capacity, a paper purporting to be a draft drawn, dated April 1, 1869, by John C. Forbes on W. J. Porter & Co., New York, for five thousand dollars, payable at sight to said Forbes' order; also, a paper purporting to be a draft, dated April 3d, 1869, drawn by said Forbes on said Porter & Co., for $4,000, payable at sight to said Forbes' order; also,

129 certain papers purporting to be receipts by F. M. Roby and one Keenan, officers of the said vessel C. C. Colson, for certain cotton delivered to the said vessel on or about the 8th day of April, 1869, from the Shippers' Press, New Orleans. I cannot find in the record in my possession the draft for $6,243\frac{27}{100}$ drawn by Forbes on Porter & Co. I herewith annex true copies of the foregoing documents and the endorsements thereon, marked from one to ten inclusive.

The receipts are marked "F" by me, commissioner, and attached to testimony of F. M. Roby. Bills of lading B and C attached to testimony of H. W. Farley.

Draft for $5,000 hereto attached, marked "G a." Draft for $4,000 hereto attached, marked "H b," by me, commissioner. The reason I decline to annex the originals is because they belong to the records of the United States district court, and a rule of court forbids their withdrawal.

Eighteenth interrogatory. Q. Please exhibit to the witnesses who are interrogated about said papers in the foregoing interrogatories at the time of taking their depositions, the said original papers, and state whether or not the papers so exhibited to them are the same papers to which your answer to the preceding interrogatory relates, of which copies are annexed to your deposition.

A. I have exhibited to the witness heretofore interrogated by the commissioner about said papers, in the interrogatories preceding the interrogatory to which this is a response, at the time of taking their depositions, the original papers referred to, and now state that the papers so exhibited to them are the same papers to which my answer to the preceding interrogatory relates, of which true and correct copies are now annexed to my deposition, and marked by the commissioner as follows:

Nineteenth interrogatory. Q. Do you know any other matter

130 or thing which may be for advantage of the claimants in this suit? If so, declare the same fully as if thereunto specially interrogated.

A. I do not.

Cross-examined:

Sixteenth cross-interrogatory. Q. If you answer yea to the interrogatory that you have in your possession a paper purporting to be a draft dated 1st April, 1869, drawn by said Forbes on said Porter & Co. for $6,243\frac{27}{100}$, state how and when and where said draft was placed in your hands. Look at the copy of the report of M. M. Cohen, United States commissioner, No. 9410, W. J. Porter & Co. vs. brig C. C. Colson, in the United States district court for the district of Louisiana, now shown you, and state whether it is correct and true copy of such report. If so, annex it hereto as exhibit. Look at the copy of documents referred to in the said report of M. M. Cohen, esq., commissioner, and state if the same is a correct and true copy, and if so, annex the same to your answer. Look at the copy of 12 drafts and 9 bills of lading now handed you, and state whether they are copies of the drafts and bills of lading heretofore attached to said commissioner's report, but removed from file by leave of court. Have you ever had any other drafts than these connected

with this commissioner's report? Look at the copy of decree of district court of the United States of America for the district of Louisiana in New Orleans, February term, W. J. Porter vs. brig C. C. Colson, No. 9410, and state whether it is a correct and true copy of such decree, and if so, annex it hereto. Look at the copy of report of M. M. Cohen, master in chancery, made in the United States circuit court, fifth circuit and district of Louisiana, in equity, No. 5849, W. J. Porter & Co. vs. F. J. Herron and als., U. S. marshal, and state whether the same is a correct and true copy. If so, annex it hereto. Look at the copy of the petition of W. J. Porter, made in the circuit court of the United States fifth circuit and district of Louisiana, No. 5849, W. J. Porter &
131 Co. vs. F. J. Herron, United States marshal et al., and state whether the same is a true and correct copy, and if so, annex it hereto. If any of the papers shown you are not true and correct copies, then have true and correct copies and annex them.

A. I have answered that I have not found in the record the draft for $6,243\frac{27}{100}$ drawn by Forbes on Porter & Co. I have looked at the report of M. M. Cohen, United States commissioner, in case No. 9,410, W. J. Porter & Co. vs. Brig C. C. Colson, in the U. S. district court for the district of Louisiana, and now state that a copy of said report and the documents referred to therein, annexed hereto, is a true copy of said report and documents, marked "Y" by me, commissioner. I have looked at the copy 12 drafts and 9 bills of lading now handed me, and state that they are copies of the drafts and bills of lading heretofore attached to said commissioner's report. I have never had any other drafts in this case than these connected with the commissioner's report. The 12 drafts are hereto annexed by me, commissioner, and marked a, b, c, d, e, f, g, h, i, j, k, l; the bills of lading are annexed to Farley's testimony, marked "Z;" I have looked at the copy of the decree of the United States district court for the district of Louisiana in New Orleans, February term, W. J. Porter & Co. vs. Brig C. C. Colson, No. 9410, and state the same is a correct and true copy of such decree, which is now annexed and marked "X." I have looked at a copy of report of M. M. Cohen, master in chancery, made in the United States circuit court, fifth circuit and district of Louisiana, in equity, No. 5849, W. J. Porter & Co. vs. F. J. Herron and als., United States marshal, and now state the same is a correct and true copy of said report, which is hereto annexed, and marked "W." I have looked at a bill in chancery, filed April 30th, 1869, on behalf of W. J. Porter, of the city of New York, made in the circuit court of the United States, fifth circuit and district of Louisiana, No. 5849, W. J. Porter & Co. vs. F. J. Herron, U. S. marshal, et al., and state that the same is a correct and true copy of said bill, now annexed and marked V.

CHAS. CLARBORNE.

132 Examination taken, reduced to writing, subscribed and sworn to by the witness this 14th day of November, 1870, before—

FRANK N. BUTLER,
Commissioner.

The following are copies of the exhibits annexed to the New Orleans commission, duly certified by the commissioner, and referred to by the witnesses, and marked as noted thereon, and also certified and marked as noted thereon in the cases of Porter v. Colson and Porter v. Herron.

EXHIBIT A.

New Orleans commission. (Referred to by H. W. Farley.)

Sales 140 bales cotton to Mr. Waddy Thompson, account Messrs H. W. Farley & Co.

Various marks, 140 bales cotton, wg. 64,962 lbs., at 26¾, $17,377.33; brokerage, ¼, $43.44.

New Orleans, April 7th, '69.

17,377.33
236.73

17,140.60

138
55

690
690

7,590

A. E. BIGNON, *Broker*,
Per P. C. DARCAUTEL.

(Indorsed:) Sale 140 bales to Waddy Thompson, through A. E. Bignon, 7th April, '69.....$17,377.33

133 EXHIBIT B.

New Orleans commission. (Referred to by Farley, Roby, Janvier, McGrath, Bignon, and Clarborne.

Also referred to by Clarborne, with eight others, as Ex. Z.

In Porter v. Colson, marked by Archer, commissioner, "A."

In Porter v. Colson, marked "K 9410.")

Filed with testimony of Pratt, May 21, '69.

Shipped in good order and well conditioned, by J. C. Forbes, on board the brig called the C. C. Colson, whereof is master, now lying in the port of New Orleans and bound for Liverpool, one hundred and thirty-nine bales cotton, marked and numbered as in the margin, and are to be delivered without delay in the like good order and condition at the port of Liverpool, (the dangers of navigation and fire only excepted,) unto order of shippers or to assigns, he or they paying freight for the said cotton at the rate of seven-sixteenths of one penny sterling per lb. weight, with five per cent. primage and average accustomed.

O	63	30,874
E	26	12,384
L	36	18,047
S	14	6,707
	139	68,012 lbs.
		7-16d.

In witness whereof the master or agent of the said vessel hath affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

JULIUS A. PRATT.

NEW ORLEANS, 1*st April*, 1869.

(Indorsed:) Deliver to order of W. J. Porter & Co. John C. Forbes. Deliver to Baring Bros. & Co., or order. W. J. Porter & Co.

134 EXHIBIT C.

New Orleans commission. (Referred to by Bignon, McGrath, Roby, Janvier, and Clarborne.

Also referred to by Clarborne, with eight others, as Ex. Z.

In Porter v. Colson, marked by Archer, commissioner, "M."

In Porter v. Colson, marked "H," filed with testimony of Pratt, May 21, '69.
In Porter v. Herron, marked No. 2, 5849, filed April 30, '69.)

Shipped in good order and well conditioned, by J. C. Forbes, on board the brig called the C. C. Colson, whereof is master, now lying in the port of New Orleans, and bound for Liverpool, one bale cotton, marked and numbered as in the margin, and are to be delivered without delay in like good order and condition at the port of Liverpool, (the dangers of the navigation and fire only excepted,) unto order of shipper or to assigns, he or they paying freight for the said cotton at the rate of seven-sixteenths of one penny sterling per pound weight, with five per cent. primage and average accustomed.

S. 1 B. C. Whg. 450 lbs.

In witness whereof the master or agent of the said vessel hath affirmed to four bills of lading all of this tenor and date, one of which being accomplished, the others to stand void.

JULIUS A. PRATT.

NEW ORLEANS, *April 8th*, 1869.

(Indorsed:) Deliver to W. J. Porter & Co. John C. Forbes, W. J. Porter & Co.

135 EXHIBIT D.

New Orleans commission. (Referred to by Farley, Bradfute, and Bignon.)

Weight 140 bales cotton sold Waddy Thompson, esq., April 5th, 1870, through A. E. Bignon, broker, for account of H. W. Farley & Co., and received April 6th, 1869.

			lbs.	lbs.	lbs.
E E 1-10 12 27	26	450, 418, 419, 494, 453, 470, 457, 460, 486, 462,	4,569		
		— 472, 571, 445, 532, 455, 585, 436, 373, 496,	4,365		
		470, 497, 467, 521, 484, 447, 500,	3,386		
				12,320	
J J 28-31	4	489, 508, 533, 503		2,033	
L 32-85.	4	536, 466, 531, 425		1,948	
P 36-00.	1	398.....		398	
	35	bales shipmarked L 1-10 12-36, and weighing			16,699
D D 1-46	40	455, 473, 416, 512, 465, 415, 488, 506, 453, 459,	4,642		
		540, 394, 446, 465, 422, 472, 453, 506, 473, 512,	4,683		
		525, 479, 403, 485, 479, 422, 434, 502, 431, 453,	4,613		
		505, 464, 468, 443, 457, 451, 480, 365, 394, 529,	4,556		
				18,494	

E E 41-63.....	23	456, 450, 449, 481, 421, 506, 334, 446, 469, 473,	4,485		
		500, 495, 476, 495, 453, 442, 511, 444, 444, 336,	4,596		
		427, 478, 420.....	1,325		
				10,406	
		63 bales shipmarked O 1-63, weighing.....			28,900
E E 1-26.....	26	443, 513, 462, 449, 456, 456, 494, 479, 490, 471,		4,713	
		486, 464, 398, 474, 420, 489, 395, 473, 598, 409,		4,606	
		477, 508, 475, 460, 435, 466,		2,821	
		26 bales shipmarked F 1-26, and weighing			12,140
136 J J 19..	9	432, 496, 485, 495, 451, 497, 519, 466, 480,	4,321		
P 10-13.....	4	405, 406, 484, 379.....	1,674		
L 14-0.....	1	343.....	343		
F B 15-16.....	2	351, 584.....			
		16 bales shipmarked S 1-16, weighing.....			7,223
		Total, 140 bales cotton, weighing			64,962

RECAPITULATION.

E E 1-10 12-27.	26 bls.	whg.	12,320 lbs.	
J J 28-31.....	4	"	2,033	
L 32-35.....	4	"	1,948	
P 36.....	1	"	398	
			16,699, 35 bls,	shipmkd. L 1-10 12-27
D D 1-40.....	40	"	18,494 lbs.	
E E 41-63.....	23	"	10,406	
			28,900, 63 "	" O 1-63
E E 1-26.....	26	"	12,140, 26 "	" F 1-26
J J 1-9.....	9	"	4,321 lbs.	
P 10-13.....	4	"	1,674	
L 14-0.....	1	"	343	
F B 15-16.....	2	"	885	
			7,223, 16 "	" S 1-16
		140 bales, weighing	64,962	
E E.....	75	"	34,866 lbs.	
D D.....	40	"	18,494	
J J.....	13	"	6,354	
P.....	5	"	2,072	
L.....	5	"	2,291	
F B.....	2	"	885	
	140		64,962	

137 EXHIBIT E.

New Orleans commission. (Referred to by Farley.)

Deposition of H. W. Farley.

W. J. PORTER & Co. }
vs.
BRIG C. C. COLSON. }

Testimony for libellants, taken before K. Loew, U. S. commissioner, June 9th, 1869. Present, H. C Miller for libellants; other proctors absent, though notified.

H. W. FARLEY, sworn, says:

Am a member of the firm of H. W. Farley & Co., cotton factors, of this city. On the 5th April, 1869, my firm sold to Waddy Thompson 140 bales of cotton through A. E. Bignon, broker. The total price of that cotton was $\$17{,}377\frac{33}{100}$, which was its full market value at the time. These 140 bales of cotton were at the Shippers' Press, stored there for my firm's account; am familiar with the market-value of cotton at that time as well as in March, 1868. In the months of March and April, 1868, ordinary to low middling cotton was worth from 25c. to 27c. a pound; from low middling to the higher grade it was worth from 27c. to about 28c. or 28½c. a pound. The classification of cotton runs from ordinary to good middling. A bale of cotton weighs from four to five hundred pounds.

(Signed) H. W. FARLEY.

Sworn to and subscribed before me June 9th, 1869.

(Signed) K. LOEW,
U. S. Commissioner.

138 EXHIBIT E E.

New Orleans commission. (Referred to by Farley, Bignon, McGrath, and Davis.)

The Shippers' Press will please deliver to A. E. Bignon, broker, 139, one hundred and thirty-nine bales cotton, as follows:

E E	76	bales from	Kentucky	press,	March 27th.
D D	40	"	"	"	"
J J	13	"	"	"	"
P	5	"	Orleans	press,	"
L	5	"	"	"	"
	139				
H B	2				
	141	bales, total.			

New Orleans, April 5th, 1869.

(Signed) H. W. FARLEY & CO.,
Per J. H. FARLEY.

A true copy of order of H. W. Farley & Co. on Shippers' Press for 141 bales cotton delivered A. E. Bignon, broker.

P. J. McGRATH
Yard-Clerk.

EXHIBIT F.

New Orleans commission. (Referred to by Keaghay, Roby, and Clarborne, No. 9410.

In Porter v. Colson, numbered from 1 to 10 respectively, as noted at foot of each, and filed with testimony of R. R. N. Keaghay, June 2, '69.)

No. 1.] NEW ORLEANS, *April* 8, 1869.
(Brig C. C. Colson.)

139 Received in good order from Sam. Boyd & Co., Shippers' Cotton Press, fourteen bales cotton, marked—

O 6
F 3
L 5
—
14 bales. Read ship's name.

F

F. M. ROBY.

(Indorsed:) 4, 9410. Filed with testimony of R. R. N. Keaghay, June 2, '69. Chas. Clarborne, U. S. cr.

No. 2.] NEW ORLEANS, *April* 8, 1869.
(Brig C. C. Colson.)

Received in good order from Sam. Boyd & Co., Shippers' Cotton-Press, fourteen bales cotton, marked—

O 4
F 3
L 5
S 2
—
14 bales. Read ship's name.

M. KEENAN.

(Indorsed:) 3, 9410. Filed with testimony of R. R. N. Keaghay, June 2, '69. Chas. Clarborne, U. S. cr.

No. 3.] NEW ORLEANS, *April* 8, 1869.
(Brig C. C. Colson.)

Received in good order from Sam. Boyd & Co., Shippers' Cotton-Press, fourteen bales cotton, marked—

O 8
F 5
L 1
—
14 bales. Read ship's name.

140 F. M. ROBY.

(Indorsed:) 5, 9410. Filed with testimony of R. R. N. Keaghay, June 2, '69. Chas. Clarborne, U. S. cr.

No. 4.] NEW ORLEANS, *April* 8, 1869.
(Brig C. C. Colson.)

Received in good order from Sam. Boyd & Co., Shippers' Cotton-Press, fourteen bales cotton, marked—

O 3
F 8
L 2
S 1
—
14 bales. Read ship's name.

F. M. ROBY.

(Indorsed:) 6, 9410. Filed with testimony of R. R. N. Keaghay, June 2, '69. Chas. Clarborne, U. S. cr.

No. 5.] NEW ORLEANS, *April* 8, 1869.
(Brig C. C. Colson.)

Received in good order from Sam. Boyd & Co., Shippers' Cotton-Press, fourteen bales cotton, marked—

O 5
F 4
L 4
S 1
—
14 bales. Read ship's name.

F. M. ROBY.

(Indorsed:) 7, 9410. Filed with testimony of R. R. N. Keaghay, June 2, '69. Chas. Clarborne, U. S. cr.

141 No. 6.] NEW ORLEANS, *April* 8, 1869.
(Brig C. C. Colson.)

Received in good order from Sam. Boyd & Co., Shippers' Cotton-Press, fourteen bales cotton, marked—

O 7
L 4
S 3
—
14 bales. Read ship's name.

F. M. ROBY.

(Indorsed:) 8, 9410. Filed with testimony of R. R. N. Keaghay, June 2, '69. Chas. Clarborne, U. S. cr.

No. 7.] NEW ORLEANS, *April* 8, 1869.
(Brig C. C. Colson.)

Received in good order from Sam. Boyd & Co., Shippers' Cotton-Press, fourteen bales cotton, marked—

O 7
F 1
L 4
S 2
—
14 bales. Read ship's name.

F. M. ROBY.

(Indorsed:) 9, 9410. Filed with testimony of R. R. N. Keaghay, June 2d, '69. Chas. Clarborne, U. S. cr.

No. 8.] NEW ORLEANS, *April* 8, 1869.
(Brig C. C. Colson.)

Received in good order from Sam. Boyd & Co., Shippers' Cotton-Press, fourteen bales cotton, marked—

142

O 11
F 1
L 1
S 1
—
14 bales.

Read ship's name.

F. M. ROBY.

(Indorsed:) 10, 9410. Filed with testimony of R. R. N. Keaghay, June 2, '69. Chas. Clarborne, U. S. cr.

No. 9.] NEW ORLEANS, *April* 8, 1869.
(Brig C. C. Colson.)

Received in good order from Sam. Boyd & Co., Shippers' Cotton-Press, fourteen bales cotton, marked—

O 8
L 5
S 1
—
14 bales.

Read ship's name.

F. M. ROBY.

(Indorsed:) 1, 9410. Filed with testimony of R. R. N. Keaghay, June 2, 69. Chas. Clarborne, U. S. cr.

No. 10.] NEW ORLEANS, *April* 8, 1869.
(Brig C. C. Colson.)

Received in good order from Sam. Boyd & Co., Shippers' Cotton-Press, fourteen bales cotton, marked—

O 4
F 1
L 4
S 5
—
14 bales.

Read ship's name.

F. M. ROBY.

143 (Indorsed:) 2, 9410. Filed with testimony of R. R. N. Keaghey, June 2d, '69. Chas. Clarborne, U. S. cr. F. M. Roby.

EXHIBIT G.

New Orleans commission. (Referred to by Janvier and Clarborne; also by Clarborne as Ex. *a*.

In Porter v. Colson, No 9410, marked by Archer, commissioner, "B," and filed with testimony of C. A. Janvier, June 2d, '69, and marked "B.")

[Duplicate.]

No. 1524, exchange for $5,000.

NEW ORLEANS, 1*st April*, 1869.

At sight of this, first of exchange, second unpaid, pay to the order of myself five thousand dollars, value received, and charge the same to account of shipt. 139 bales cotton per C. C. Colson.

J. C. FORBES.

To Messrs. W. J. PORTER & Co., New York.

(Indorsed:) Jno. C. Forbes. Pp. Waddy Thompson, Chas. A. Janvier. Pay W. B. Meeker, esq., cashier, or order. Pike Brothers & Co. Paid at the Bank of New York.

EXHIBIT H.

New Orleans commission. (Referred to by Janvier and Clarborne, also by Clarborne as Ex. B.

144 In Porter v. Colson, No. 9510, marked by Archer, commissioner, "Ex. C;" also marked in that case "A," and filed with testimony of C. A. Janvier, June 2, 1869.)

[Original.]

No. 1562, exchange for $4,000.

NEW ORLEANS, 3*d April*, 1869.

At sight of this, first of exchange, second unpaid, pay to the order of myself four thousand dollars, value received, and charge the same to account of shipment 139 bales of cotton per C. C. Colson.

J. C. FORBES.

To Messrs. W. J. PORTER & Co., New York.

(Indorsed:) Jno. C. Forbes. Pp. Waddy Thompson, Chas. A. Janvier. Pay W. B. Meeker, cashier, or order. Pike Brothers & Co. Paid at the Bank of New York.

EXHIBIT *c*.

New Orleans commission. (Referred to by Clarborne.

In Porter v. Colson, No. 9410, marked by Archer, commissioner, "L," and filed with testimony of C. A. Janvier, June 2,' 69, and marked "H.")

[Original.]

No. 1430, exchange for $22,100.

NEW ORLEANS, 27*th March*, 1869.

At sight of this, first of exchange, second unpaid, pay to the order of myself twenty-two thousand one hundred dollars, value received, and charge the same to account of shipment 221 bales of cotton per brig C. C. Colson.

JNO. C. FORBES.

To Messrs. W. J. PORTER & Co.,
142 *Pearl St., New York.*

145 (Indorsed:) Jno. C. Forbes. Pp. Waddy Thompson, Chas. A. Janvier. Pay W. B. Meeker, esq., cashier or order. Pike Brothers & Co. Paid at the Bank of New York.

EXHIBIT *d*.

New Orleans commission. (Referred to by Clarborne.
In Porter v. Colson, No. 9410, marked by Archer, commissioner, "R," and filed with testimony of C. A. Janvier, June 2, '69, marked "D.")

[Duplicate.]

Exchange for $20,000.

NEW ORLEANS, *25th March*, 1869.

Five days after sight of this, first of exchange, second unpaid, pay to the order of myself twenty thousand dollars, value received, and charge the same to account of—

Pp. WADDY THOMPSON,
CHAS. A. JANVIER.

[$5 rev. stamp.]

Accepted, payable at our office.

W. J. PORTER & CO.,
By G. E. HAMILTON.

To Messrs. W. J. PORTER & Co.,
142 *Pearl St., New York.*

(Indorsed:) Pp. Waddy Thompson, Chas. A. Janvier. Pay Andrew Read, or order. Wheless & Pratt. Andrew Read.

146 EXHIBIT E.

New Orleans commission. (Referred to by Clarborne.
In Porter v Colson, No. 9410, marked by Archer, Commissioner, "S," and filed.)

[Original.]

No. 1429, exchange for $30,000.

NEW ORLEANS, *27th March*, 1869.

Three days after sight of this, first of exchange, second unpaid, pay to the order of myself thirty thousand dollars, value received, and charge same to the account of—

Pp. WADDY THOMPSON,
C. A. JANVIER.

To Messrs. W. J. PORTER & Co.,
142 *Pearl Street, New York.*

[$15 int. rev. stamp.]

April 1, 1869. Accepted, payable at our office.

W. J. PORTER & CO.,
By G. E. HAMILTON.

(Indorsed:) Pp. Waddy Thompson, Chas. A. Janvier. Pay W. B. Meeker, esq., cashier, or order. Pike, Brother & Co.

EXHIBIT F.

New Orleans commission. (Referred to by Clarborne.
In Porter v. Colson, No. 9410, marked by Archer, commissioner, "O," and filed with testimony of C. A. Janvier, June 2d, 1869, and marked "E.")

[Duplicate.]

No. 1542, exchange for $10,000.

NEW ORLEANS, *3d April*, 1869.

147 Five days after sight of this, first of exchange, second unpaid, pay to the order of myself ten thousand dollars, value received, and charge the same to account of—

Pp. WADDY THOMPSON,
CHAS. A. JANVIER.

To W. J. PORTER & Co.,
142 *Pearl Street, New York.*

$5 int-rev. stamp.

Accepted April 7th, 1869. Payable at our office.
W. J. PORTER & CO.,
By G. E. HAMILTON.

(Indorsed:) Pp. Waddy Thompson. Chas. A. Janvier. Pay W. B. Meeker, esq., cashier, or order. Pike Brother & Co.

EXHIBIT G.

New Orleans commission. (Referred to by Clarborne.)
In Porter v. Colson, No. 9410, marked by Archer, commissioner, A A, and filed with testimony of Chas. A. Janvier June 2d, '69, marked F.

[Original.]

Exchange for $6,900.

NEW ORLEANS, *8th April*, 1869.

At sight of this first of exchange, second unpaid, pay to the order of myself six thousand nine hundred dollars, value received, and charge the same to account of—

Pp. WADDY THOMPSON.
CHAS. A. JANVIER.

To Messrs. W. J. PORTER & Co.,
142 *Pearl Street, New York.*

(Indorsed:) Pp. Waddy Thomson. Chas. A. Janvier. Pay Duncan Sherman & Co., or order. Wheliss & Pratt. Duncan Sherman.

148 EXHIBIT H.

New Orleans commission. (Referred to by Clarborne.)
In Porter v. Colson, No. 9410, marked by Archer, commissioner, T, and filed with testimony of C. A. Janvier, June 2d, 1869, marked G.

[Duplicate.]

Exchanged for 963\frac{83}{100}$.

NEW ORLEANS, *30th March*, 1869.

At sight of this first of exchange, second unpaid, pay to order of

yourselves nine hundred and sixty-three dollars, value received, and charge the same to account of shipment 221 bales cotton per C. C. Colson.

Pp. WADDY THOMPSON.
CHAS. A. JANVIER.

To Messrs. W. J. PORTER & Co., *New York.*

EXHIBIT I.

New Orleans commission. (Referred to by Clarborne.)
In Porter v. Colson, No. 9410, marked by Archer, commissioner, H. Filed with testimony of C. A. Janvier, June 2, '69, marked J.

[Original.]

No. 1240—$10,700.

NEW ORLEANS, 18*th March*, 1869.

At sight of this my first of exchange, second of same tenor and date unpaid, pay to the order of myself, for value received, ten thousand seven hundred dollars, and charge to 107 bales of cotton per brig C. C. Colson.

JNO. C. FORBES.

To Messrs. W. J. PORTER & Co.,
142 *Pearl St., New York.*

149 (Indorsed:) Jno. C. Forbes. Waddy Thompson. Pay W. B. Meeker, esq., cashier, or order. Pike, Brother & Co. Paid at the Bank of New York.

EXHIBIT J.

New Orleans commission. (Referred to by Clarborne.)
In Porter v. Colson, No. 9410, marked by Archer, commissioner, J. Filed with testimony of C. A. Janvier, June 2, '69, marked I.

[Original.]

No. 1312—$1,591.

NEW ORLEANS, 22*d March*, 1869.

At sight of this my first of exchange, second of same tenor and date unpaid, pay to the order of myself, for value received, fifteen hundred and ninety-one dollars, and charge to shipment 266 bales of cotton per brig C. C. Colson.

J. C. FORBES.

To Messrs. W. J. PORTER & Co.,
142 *Pearl St., New York.*

(Indorsed:) J. C. Forbes, pp. Waddy Thompson. Chas. A. Janvier. Pay W. B. Meeker, esq., cashier, or order. Pike, Brother & Co. Paid at the Bank of New York.

EXHIBIT K.

New Orleans commission. (Referred to by Clarborne.)
In Porter v. Colson, No. 9410, marked by Archer, commissioner, G. Filed with testimony of C. A. Janvier, marked K.

150 [Original.]

No. 1239—$15,000.

NEW ORLEANS, 18*th March*, 1869.

At sight of this my first of exchange, second of same tenor and date unpaid, pay to the order of myself, for value received, fifteen thousand dollars.

JNO. C. FORBES.

To Messrs. W. J. PORTER & Co.,
142 *Pearl St., New York.*

(Indorsed:) Jno. C. Forbes, pp. Waddy Thompson. Chas. A. Janvier. Pay W. B. Meeker, esq., cashier, or order. Pike, Brother & Co. Paid at the Bank of New York.

EXHIBIT I.

New Orleans commission. (Referred to by Clarbone.)
In Porter v. Colson, No. 9410, marked by Archer, commissioner, P. Filed with testimony of C. A. Janvier, June 2d, 1869, marked C.

[Original.]

No. 1293, exchange for $7,500.

NEW ORLEANS, 25*th March*, 1869.

At sight of this first of exchange, second unpaid, pay to the order of myself seven thousand five hundred dollars, value received, and charge the same to account of shipment 56 bales of cotton per brig C. C. Colson.

Pp. WADDY THOMPSON.
CHAS. A. JANVIER.

To Messrs. W. J. PORTER & Co.,
142 *Pearl St., New York.*

151 (Indorsed:) Pp. Waddy Thompson. Chas. A. Janvier. Pay W. B. Meeker, esq., cashier, or order. Pike, Brother & Co. Paid at the Bank of New York.

EXHIBIT I.

New Orleans commission. (Referred to by Bignon.)
Invoice: 140 bales cotton purchased from me.

H. W. FARLEY & CO.,
Account Waddy Thompson.

O 1-63	455	525	540	505	456	500	427
	473	479	394	464	450	495	478
	416	403	446	468	449	476	420
	512	485	465	443	481	495	
	465	479	422	457	421	453	
	415	422	472	451	506	442	
	488	434	453	480	334	511	
	506	502	506	365	446	444	
	453	431	473	394	469	444	
	459	453	512	529	473	336	
	4642	4613	4683	4556	4485	4596	1325

F 1-16	443	486	477	L 1-35	450	470	472	526
	513	464	508		418	497	571	466
	462	398	475		419	467	445	531
	449	474	460		494	521	532	425
	456	420	435		453	484	455	398
	456	489	466		470	447	586	
	494	395			457	500	436	
	479	473			460	489	373	
	490	598			486	508	596	
	471	409			462	533	503	
	4713	4606	2821		4569	4916	4868	2346

152	S 1-16	432	406
		496	484
		485	379
		495	343
		451	351
		497	534
		519	
		466	
		480	
		405	
		4726	2497

RECAPITULATION.

O	63	bales cotton,	weighing 28,900	lbs., low mid.
F	26	"	" 12,140	" str. good, ord.
L	35	"	" 16,699	" good, "
S	16	"	" 7,223	" ordinary.

140 bales cotton, weighing 64,962 lbs., @ 26¾c., $17,377.33.
Brokerage ½, $86.88.

A. E. BIGNON, *Broker.*
Ass. P. C. DARCANTEL.

NEW ORLEANS, *April 7th*, '69.
Brig C. C. Colson.

EXHIBIT K.

New Orleans commission. (Referred to by Davis, Bignon, and McGrath.)

From H. W. Farley & Co. to Waddy Thompson.

		O 63	
April 5, No. 52	141	F 26	
		L 36—1	b. c. No. 11, small "E E."
		S 16	No. 27, not to be shipped; waterpacked.
		141	

(140 bales cotton weighed, signed Brad.)
(Signed) A. E. BIGNON, *Broker*,
Per DAVIS.

153 NEW ORLEANS, *April 6th*, 1869.

A true copy from transfer or black book of Shippers' Press.

P. J. McGRATH,
Yard-Clerk.

EXHIBIT K 2.

New Orleans commission. (Referred to by McGrath, Davis, and Bignon.)

Shippers' Press—

Will please compress and send brig C. C. Colson the following cotton for account of Waddy Thompson :

O 63
F 26
L 26
S 16

141 bales.

And oblige

A. E. BIGNON,
Per DAVIS.

NEW ORLEANS, *April 6th*, '69.

EXHIBIT L.

New Orleans commission. (Referred to by McGrath, Davis & Bignon.)

E E	76	bales,	March 27th,	1869.
D D	40	"	"	"
J J	13	"	"	"
P	5	"	"	"
L	5	"	"	"
E B	2	"	"	"

Account H. W. FARLEY & CO.,
A. E. BIGNON.

A true copy from receiving-book.

P. J. McGRATH.

154 EXHIBITS O O 2.

New Orleans commission. (Referred to by Miller.)

NEW ORLEANS, *June 24th*, 1870.

Received from Henry C. Miller one thousand six hundred and forty-one $\frac{73}{100}$ dollars, amount accruing to A. C. Schaefer & Co. from proceeds of cargo brig C. C. Colson, as per agreement.

$1,641\frac{73}{100}$. (Signed) SIMMES & MOTT,
O 1. *Attorney for Schaeffer & Co.*

Acceptance referred to by me.

HENRY C. MILLER.

NEW ORLEANS, 22*d March*, 1870.

Received from Henry C. Miller, attorney for W. J. Porter & Co., six hundred and nine $\frac{20}{100}$ dollars, amount accruing to Schaefer & Co. from proceeds brig C. C. Colson, as per agreement and statement rendered.

$609\frac{20}{100}$. (Signed) SIMMES & MOTT,
Attorneys of Schaeffer & Co.

Schaefer's proportion	$614 83
Less libellants' costs	5 63
	$609 20

O 2.

Acceptance referred to by me.

HENRY C. MILLER.

EXHIBIT V.

New Orleans commission. (Referred to by Clarborne.)

Circuit court of the United States, fifth circuit and district of Louisiana.

155 W. J. PORTER & Co. *vs.* F. J. HERRON, U. S. MARSHAL, ET AL. } U. S. circuit court, No. 5849.

Bill in chancery.—Filed April 30th, 1869.

To the honorable the judges of the circuit court for the fifth circuit and district of Louisiana.

William J. Porter, of the city of New York, and who is a citizen of the State of New York, brings this his bill against Francis J. Herron, the marshal of the United States for the district of Louisiana, and against P. H. Morgan, U. S. attorney for said district, both of New Orleans, and citizens of the State of Louisiana; and thereupon your orator complains and says, that on or about the 2d April, 1869, one John C. Forbes shipped on board the brig C. C. Colson the following property, to wit: four hundred and sixty-four bales cotton, paper-stock, and moss for delivery at the port of Liverpool, England, whither said brig was then represented to be destined when the loading of her cargo was completed; that said property it was stipulated should be delivered there to the order of said shipper or to his assigns; that accordingly bills of lading were taken for said property, which were duly signed by the master of said brig, in which bills it is stipulated and agreed that said property is to be delivered at said port of Liverpool to the order of said shipper; that said bills of lading are for eight hundred and fifty-three bales of cotton, yet only the 464 bales aforesaid were actually
156 laden and placed on board said brig, and said 464 bales were delivered to and received by the proper officers of said brig, and placed on board said brig as a portion of the property described in said bills of lading, all of which more fully appears by the bills of lading hereto annexed as a part hereof, and are marked 1, 2, 3, 4, 5, 6, 7, and 8; that after said bills of lading were executed certain bills of exchange were drawn by said shipper and by one Waddy Thompson upon your orator, and said bills were represented to be drawn against said cotton represented to have been shipped by said bills of lading: that with said bills of exchange said bills of lading were forwarded, according to mercantile custom; that your orator paid said bills of exchange with his own funds for the benefit and accommodation of the drawers thereof, with no funds in his hands for said drawers or either, whereupon said bills of lading were duly indorsed by said shippers and transferred to and delivered to your orator, to the end that he might control the property described in said bills of lading; that the amount so paid by your

orator is shown by the schedule A herewith filed, marked "A," and is $103,754 $\frac{80}{100}$; that your orator, by reason of the premises, is the bona-fide and lawful holder of said bills of lading, and entitled to said 464 bales; that at the time of the transactions herein referred to your orator was and now is solely and alone conducting commercial business in New York, under the firm-name of W. J. Porter & Co., on whom said bills of exchange were drawn.

Your orator further shows that notwithstanding the premises, the aforesaid Francis J. Herron, marshal of the United States for this district, has signed and taken into his possession said 464 bales of cotton, paper-stock, and moss, being the same taken by said marshal from said brig C. C. Colson, after being placed on board of her as aforesaid, and said marshal refuses absolutely to deliver the same to your orator though thereto requested, and as he in conscience and equity ought to do.

That your orator acquired said bils of lading, and the same were
157 transferred to him as aforesaid, and he paid said bills of exchange before and prior to said seizure by said marshal; your orator shows that said Forbes is out of the jurisdiction of this court, and your orator prays that proper process issue against him should he come within it; your orator shows that said marshal holds in his hands an execution on a judgment against John C. Forbes, rendered in the suit of the United States vs. J. C. Forbes et al., No. 5532 of the docket of this court, under which he pretends to justify said seizure, but the same affords him no warrant to take the property of your orator; that he has advertised said property for sale under said execution, and will sell the same, thereby occasioning irreparable injury to your orator, unless restrained by injunction; and that the said Francis J. Herron, United States marshal, and P. H. Morgan, United States attorney, may be restrained by injunction from proceeding further in said seizure and detention of the aforesaid 464 bales of cotton, paper-stock, and moss taken from said brig C. C. Colson, and that said marshal may be enjoined to absolutely refrain and desist from selling said 464 bales, and to the end that he may be enjoined to deliver the same to your orator, and that your orator may have general relief in the premises. Therefore will your honors grant unto your orator the writ of subpœna issuing out of and under the seal of this court, directed to said defendants, and to each of them, commanding them to appear by a certain day and under a certain penalty to appear before your honors and answer the premises and abide the order and decree of this court.

(Signed) E. W. HUNTINGTON,
HENRY C. MILLER,
Solicitors for Plaintiff.

Order: Let service of process be made upon F. J. Herron, U. S. marshal, one of the defendants in this case, by John Devonshire, who is hereby appointed special deputy marshal for that purpose.

(Signed) E. H. DURELL, *Judge.*

APRIL 30th, 1869.

158 *Judgement.*

(Extract from the judgement docket.)

United States circuit court, fifth circuit and district of Louisiana.—April term, 1870.

NEW ORLEANS, *Thursday, June 16th*, 1870.

Court met pursuant to adjournment.
Present: E. H. Durell, district judge.

W. J. PORTER & Co. *vs.* F. J. HERRON. } N. 5849.

For reason orally assigned it is ordered, adjudged, and decreed that there be judgment declaring W. J. Porter & Co. entitled to the proceeds of the 464 bales of cotton seized in this case; that it be referred to M. M. Cohen, master in chancery, to ascertain the amount in the registry realized from the sale of the said cotton and the amount realized from the sale of the brig and other goods that may have been seized in this case. It is further ordered, that the proceeds of the cotton be paid over to W. J. Porter & Co., free of costs, should there be funds in the registry, from other goods and property seized herein, sufficient to cover the said costs.

Decree rendered June 16th, 1870.
Decree signed June 21st, 1870.
(Signed) E. H. DURELL, *Judge.*

159 CLERK'S OFFICE.

I certify the foregoing to be true copies of the originals on file and of record in the above-entitled cause in this office.

Witness my hand and seal of said court at the city of New Orleans this 23d day of June, A. D. 1870.

D. URBAN,
Clerk.

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 23d day of June, A. D. 1870.

E. H. DURELL,
Judge.

EXHIBIT W.

New Orleans commission. (Referred to by Clarborne.)

United States circuit court, fifth circuit and district of Louisiana.—In equity.

W. J. PORTER & Co. *vs.* F. J. HERRON, U. S. MARSHAL, ET AL. } No. 5849.

The report of M. M. Cohen, master in chancery, respectfully

160 showeth that the following order was made by this honorable court:

"For reasons orally assigned, it is ordered, adjudged, and decreed that there be judgment declaring W. J. Porter & Co. entitled to the proceeds of the 464 bales of cotton seized in this case; that it be referred to M. M. Cohen, master in chancery, to ascertain the amount in the registry realized from the sale of the said cotton and the amount realized from the sale of brig and other goods that may have been seized in this case.

"It is further ordered that the proceeds of the cotton be paid over to W. J. Porter & Co. free of costs, should there be funds in the registry, from other goods and property seized herein, suffic'ent to cover the said costs."

This commissioner further reports that he notified A. B. Long, esq., United States district attorney, Mott & Simmes, esqrs., and Lea, Finney and Miller, representing the parties in interest, of the time and place when the matter referred to him would be inquired into; that in pursuance of said notice he, at the time and place appointed, entered upon said reference.

That he finds by examination that the fund in the registry of this honorable court in this case is the sum $15,863.89. This is the net proceeds realized from the sale of the cargo of the brig C. C. Colson.

That cargo consisting of 464 bales of cotton and 64 bales of moss.

See marshals' return.

See auctioneers' certificate.

The sale of the 64 bales of moss produced the sum of $576. The decree directs that out of this fund of $576 all the judicial costs as well as those incident to the sale of the total cargo shall be paid, and in the event that the fund realized from the moss is insufficient to pay these costs, then that the deficit shall be paid out of the proceeds of the sale of the cotton.

161 The proceeds now in the registry of this honorable court are the result of the sales of the total cargo.

The decree in this case awards the total proceeds of the cotton to the complainants, W. J. Porter & Co., subject to this contribution for costs.

The costs now due amount to $576. The costs of the late marshal, F. J. Herron, already paid, for the greater part incurred in selling the cargo, were $2,513.63.

Thus the costs largely exceed the amount produced by the sale of the 64 bales of moss.

It follows, therefore, that the total proceeds now in the registry must be awarded to the complainants, Wm. J. Porter & Co., less the costs remaining unpaid, which costs are to be defrayed by the proceeds of the sale of the moss.

In accordance with the foregoing views I report and recommend that out of the proceeds in the registry should be paid:		$15,863 89
Clerk's costs	$74 30	
Marshal's costs	32 50	
U. S. Com'r Urban, for taking testimony	41 10	
Clerk, commissions of ½ on amount deposited	158 63	
Future contingent costs of court	19 47	
Master' fee for services in this case and for this report	250 00	
		$576 00
		$15,287 89

This balance of $15,287.89, arising from the sale of the cargo of the brig C. C. Colson, made by the marshal under the writ in the case of the U. S. vs. J. C. Forbes, No. 5532, and paid by him unto the registry, must be awarded, under the decree of this honorable court, to the complainants, W. J. Porter & Co.

Thus it will result that, by the distribution now recommended
162 by me, master, W. J. Porter & Co. will receive all the funds now in court arising from the sale of the cotton, and that the fees and costs now remaining due are to be paid out of the proceeds of the sale of the moss.

Respectfully submitted.

(Signed) M. M. COHEN,
Master.

CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original on file in the above-entitled cause.

Witness my hand and seal of said court, at New Orleans, this 6th day of July, 1870.

F. B. VINOT,
Deputy Clerk.

EXHIBIT X.

New Orleans commission. Referred to by Clarborne.

United States district court for the district of Louisiana.—February term, A. D. 1870.

New Orleans, Wednesday, the 2d day of March, 1870.

E. A. DURELL, *Judge.*

W. J. PORTER & Co.
vs.
BRIG C. C. COLSON. } No. 9410 & 9407.

A. C. SCHAEFER & Co.
vs.
SAME.

This cause came up on report of the U. S. commissioner, and,
163 no objection being made, it is ordered that the said report be approved and promulgated, and that, in accordance therewith, the proceeds of the brig C. C. Colson be distributed as follows, viz:

Gross proceeds	$7,700 00
First. Payment made by order of court to H. J. Herron, late marshal, his costs, June 18, '69	384 57
Second. Law charges, C. Clarborne, clk	118 30
C. Clarborne, U. S. comr., fee	70 00
C. Clarborne, registrar, 1 per cent	77 00
New York commission	10 00
H. G. Heart, appraiser	154 00
U. S. Marshal Packard	567 06
M. M. Cohen, commissioner	150 00
Reserve for further contingent cost	50 00

3, J. F. Casey, collector, expenses	238 75
4, F. M. Roby, mate	160 00
5, Materials, Lagun & Malkison	22 70
6, W. J. Porter & Co.	5,697 62
	$7,700 00

And it is further ordered that the other claims take noting in this distribution.

(Signed) E. H. DURELL, *Judge.*

True copy.
Clerk's office, July 5, 1870.
Judgment rendered March 2, '70.
Judgment signed March 7, 1870.

K. LOEW,
Deputy Clerk.

EXHIBIT Y.

New Orleans commission. Master's report in Porter v. Colson, and accompanying documents. (Referred to by Clarborne.)

164 United States district court for the district of Louisiana.

W. J. PORTER & Co. *vs.* BRIG C. C. COLSON. } No. 9410.

A. C. SHAEFER & Co. *vs.* THE SAME. } No. 9407.

The report of M. M. Cohen, commissioner, respectfully showeth that on the 29th day of January, 1870, it was ordered by this honorable court that the cause be referred to him for examination, and report on the various claims herein. In obedience to said order, the court duly notified all parties in interest that the matters thus referred to him would be examined on the 3d day of February, 1870, at three o'clock p. m., at his office. Accordingly, at the above time and place, I proceeded to take testimony and hear arguments in regard to the respective claims.

J. O. Denegre, esq., representing Pike Brother & Co., introduces in evidence.

1st. A promissory note for $15,000, dated New Orleans, March 23d, 1869, payable twelve months after date, with interest, at the rate of 8 per cent. per annum, from date until paid; said note being drawn by Francis H. Page to his own order and by him indorsed, and also by Waddy Thompson.

2d. Certificate under seal from the collector's office, United States custom-house, port of New Orleans, that the records of this office
165 show that Francis H. Page was sole owner of brig Christa C. Colson on the 18th day of March, 1869.

3d. Act of mortgage, identified with the note hereinabove described, and bearing upon the said brig Colson. Henry C. Miller, esq., for W. J. Porter & Co., objects to the claim of intervenors, Pike Bro-

ther & Co., on the ground that said mortgage cannot prevail against the libellants' admiralty lien, and the mortgagor was not the owner of the vessel, to the knowledge of Pike Brother & Co., and that their demand is not cognizable in the admiralty at all.

Henry C. Miller, esq., on behalf of W. J. Porter & Co. offers in evidence:

1st. Depositions before N. Appleton, esq., New York, commissioner, marked "F, M. M. Cohen, commissioner."

2d. Deposition of Charles A. Janvier and R. A. Keaghey in document "A, M. M. Cohen, commissioner."

3d. Press receipts, marked "G, M. M. Cohen, commissioner," and numbered from 1 to 10, inclusive.

4th. Deposition of F. M. Roby, marked "C, M. M. Cohen, commissioner."

5th. Deposition of H. W. Farley, W. S. Pike, and Geo. Bigger, in document "C."

6th. Deposition of J. A. Pratt & Charles A. Janvier, marked "B, M. M. Cohen, commissioner."

7th. Deposition of Pratt, marked "E, M. M. Cohen, commissioner."

8th. Bills of lading and of exchange attached to the document, marked "F, M. M. Cohen, commissioner," which document "F" contain*ing* the deposition before Apleton.

9th. The bills of lading, contained in document marked "G, M. M. Cohen, commissioner."

166 10th. Deposition of Chas. A. Janvier, marked "A & B, M. M. Cohen, commissioner."

11th. Deposition of F. M. Roby, marked "D, M. M. Cohen, commissioner."

12th. Deposition of J. A. Pratt, marked "B, M. M. Cohen, commissioner."

J. O. Denegre, esq., in behalf of Pike Brother & Co., objects to the claim of W. J. Porter & Co.: Firstly, on the ground that it is not within the admiralty and maritime jurisdiction, and that it is a personal claim and for damages, and cannot be instituted in the admiralty court; and, secondly, on the ground that if it is a case within the admiralty jurisdiction, the libellants, W. J. Porter & Co., have no lien on the vessel, because there was no contract of affreightment, and that no merchandise was ever placed on the vessel to create a lien.

R. De Gray, esq., proctor for Julius A. Pratt, offers the intervention of said Pratt and his testimony. He claims, as master of Colson, wages amounting to $586.68. J. O. Denegre, esq., objects to this claim, because the captain joined to cheat these people out of their money.

From the records, the testimony, and arguments of counsel, I conclude and report as follows:

The gross proceeds of the sale of the Colson were..... $7,700

Distributed as follows:

First. Payments made by order of court, late United States Marshal Herron, his costs as per order of court, 18th June, 1869	384 57
Second. Law charges, C. Clarborne, as clerk's fees in No. 9410	103 75
C. Clarborne, as clerk's fees in No. 7407	14 55
United States commissioner	70 00
C. Clarborne, registrar, 1 per cent	77 00
New York commissioner	10 00

	H. J. Heartt, appraiser	154 00
167	United States Marshal Packard	567 06
	M. M. Cohen, commissioner	150 00
	Reserve for future contingent costs of court	50 00
	Third. Expenses incurred, J. F. Casey, collector, as shown by his intervening libel	238 75

And by affidavit of P. E. Bechetel, auditor of the customs, sworn to 24th February, 1870.

Fourth. F. M. Roby was the mate of the vessel. He claims wages for thirty-two days amounting to $160. It is the highest rank and entitled to be paid. (See 1 Conklin Adm., 109.) J. A. Pratt was the master of the vessel and claims $586.68 as wages for two months 28 days. As master he has no lien on the vessel. His claim is only personal against the owner. (See 1 Conklin Adm., p. 115.)

The article of the Louisiana Code, which gives a privilege to the master as well as to the crew is inapplicable, as the liens conferred by the local law are no longer cognizable in admiralty rule of Supreme Court, 1st May, 1857. In England the master had no lien on the ship for his wages, and first acquired the same rights of lien for the recovery of his wages as a seaman, by 16 section of 7 & 8 Victoria, c. 112. (See the Mary Ann, 1 Adm. & Eccles., page 8, A. D. 1865-'7.) State legislature have no authority to create a maritime lien. (The Belfast, 7 Wall, U. S. Sup. Court, R. 644.)

I am not aware of any similar act of Congress. His claim is therefore disallowed.

Fifth. Material men. Logan and Mackeson are material men. Their claim is for $22.70. It is entitled to be paid. The total sum of the claims thus herein above reported as paid or entitled to be paid, amounts to $2,002.38. This sum being deducted will leave to be distributed among other contestants for liens the sum of $5,697.62.

168 Sixth. Other contestants for liens. They are as follows: W. J. Porter & Co. claim the value of one hundred and thirty-nine bales of cotton. They allege that the vessel became bound to carry and deliver the same to them; that the contract of affreightment was violated by the non-delivery of the property; they produce the bill of lading for the cotton signed by the master of the brig, and a decree for that value.

The damages accruing from violation of a contract of affreightment is cognizable in the admiralty, which will enforce the payment of these damages.

The damages are the value of the property for which the vessel is in default. The admiralty gives a lien upon the vessel for the damages. (See 1 Conkling's Admiralty, page 161, 163; 2 Gallison, p. 398; 6 Howard, p. 392.)

In this case it is clearly proved that the 139 bales were actually delivered to the mate of the vessel. He gave the usual dray receipts for the property, which are in evidence. The contract of affreightment was completed, and the liability of the vessel was fixed by the delivery.

The carrier in his personal capacity became liable by that delivery, and the ship became liable by the same fact.

The admiralty knows no distinction between the personal liability of the carrier and that of the ship itself. It is true the property was given back to the shipper after this delivery.

But how does this discharge the clear liability of the carrier?

When the property was thus surrendered by the carrier he had signed bills of lading for it, which were then actually held for value by the

libellants. It was a fraud by the shipper to induce the carrier to give to him property then the property of the bill-holders. That fraud the carrier should have resisted, and held the property for its owner, to whom he had then become bound to deliver it.

169 The brig is bound for the value of the property, which is shown to be $17,377.33. This exceeds the proceeds remaining after satisfying the privileged claims stated above, and the undersigned commissioner reports in favor of awarding to W. J. Porter & Co., the libellants, the said remainder of said proceeds.

See dray receipts; see testimony of H. W. Farley; see testimony of Roby; see testimony of Porter; see bill of lading for 139 bales; see testimony of Keaghey; see two bills of exchange, one of $5,000 and one of $4,000.

Schaefer & Co. have filed an intervening libel, but have made no proof of lien. Their claim is disallowed.

The United States seized the brig on execution issued on their judgment against J. C. Forbes. This seizure was made on 11th May, 1869. Even if the brig was then Forbes' property, she was then clearly subject to the lien of libellants, W. J. Porter & Co., which necessarily prevails over a personal creditor of the owner. But Forbes was not the registered owner, and the money for the brig was paid by Waddy Thompson.

See sheriff's return of seizure; see testimony of Janvier; see testimony of Roby and Pratt; see certificate custom-house, offered in evidence by Pike, Brother & Co.

Pike, Brother & Co. have filed an intervention, claiming the amount of a promissory note made by F. H. Page.

The testimony as to ownership has already been stated; but assuming Page to have been the owner, is the claim cognizable in the admiralty at all; and if cognizable, does it import any lien equal or superior to that of the libellants?

It is true the act of the legislature of Louisiana authorizes mortgages of ships, but does such a mortgage resemble a maritime contract? The bottomry bond is a mortgage of the vessel to secure money loaned to the master for the purposes of the ship to enable her to perform her voyage.

The ship must be in necessity, which that money is loaned to
170 relieve. Unless that necessity exists, and the money is bona fide loaned to meet that necessity, there is no bottomry. Bottomry is a maritime contract, and gives an admiralty lien on the vessel, and one of high dignity. But a mortgage under a State law, having no origin in this necessity for money, not even pretended to be loaned the master, has none of the features of a maritime contract. It bears no resemblance to a bottomry-bond, and the holder of such has no footing whatever in the admiralty; still less is a demand based upon a promissory note received by a Louisiana mortgage entitled to compete with a clear, well-established lien for the violation of a contract of affreightment. (See 1 Conkling's Admiralty, page 269, et seq.; Acts of Louisiana, 8169, p. 35.)

It is true that in 18 Howard the Supreme Court of the United States said: Under the maritime law of the United States the vessel is bound to the cargo, and the cargo to the vessel, for the performance of a contract of affreightment, but the law creates no lien on a vessel as a security for the performance of a contract to transport cargo until some lawful contract of affreightment is made and a cargo shipped under it.

(Schooner, Freeman & Co. vs. Brickinghaus et al., 18 Howard, Sup. Ct. Rep., 188.) And again in 19 Howard the court says:

"If the cargo be not placed on board, it is not bound to the vessel, and the vessel cannot be in default for the non-delivery in good order of goods never received on board; consequently if the master or owner refuse to perform his contract, or for any other reason the ship does not receive cargo and depart on her voyage according to contract, the charterer has no privilege or maritime lien on the ship for such breach of contract by the owners, but must resort to his personal actions for damages as in other cases." (Vanderwater vs. Mills, 19 Howard, Sup. Ct. Rep., p. 90.)

But this commissioner humbly conceives that there is no occa-
171 sion to controvert any law contained in the Yankee Blade case, (19 Howard, p. 188.) Neither profess to decide the question in this case, was that question involved in either. The first was attempt to hold a vessel in admiralty for damages for a breach of contract, the owner of the vessel having refused to carry it out. There was under the contract neither a passenger nor a pound of freight ever delivered. The case is manifestly distinguishable from this, when the carrier actually received the property for delivery. The court says in the Yankee Blade case the contract was from its nature not cognizable in the admiralty. The other case, that in 18 Howard, decides that the innocent owner is not bound by false bills of lading for property not shipped. The court certainly did not mean to say that property was not to be deemed shipped when actually delivered to the carrier, nor was it necessary, for no such question was before it. These very cases are commented upon by Mr. Parsons as not conflicting with, but supporting the conclusions that a delivery of the property to be shipped to any person authorized by the master to receive them binds the ship. The case put by Mr. Parsons is the libellants' case. (See 1 Parsons' Maritime Law, p. 132, his note at foot.)

It may be improper to add that in the case of White's Bank vs. Smith, 7 Wallace, U. S. Sup. Court Reports, 648, the vessel having been sold subsequently to the date of both mortgages under a paramount lien for seamen's wages, and a remnant of the proceeds of sale after payment of such wages remaining, the question was to which of the mortgages it should be applied. It does not appear in that case that either mortgagee asserted any maritime lien, but proceeded against the remnant of the proceeds of sale.

The mere mortgage of a vessel is not a maritime contract. (Bogart vs. the John Jay, 17 H., 399, S. C.; 3 Bl. C. C., 67.)

But if any vessel be sold under a maritime lien, the mortgagee may come in on the fund. (Leland vs. The Medora, 2 W. & M., 92; Deslon vs. The Medora, ibid, 118. See also 3 A. M. Law Reg., 232.)

172 On the whole, I, commissioner, conclude, report, and recommend that the claim of W. J. Porter & Co. be allowed, and as that will exhaust the fund remaining after paying the claims hereinabove stated as having a priority over W. J. Porter & Co., the result is that Pike, Brother & Co. are to receive no portion of the amout distributed by this report, which is respectfully submitted by

(Signed) M. M. COHEN,
Commissioner.
CLERK'S OFFICE.

A true copy of the original on file.
New Orleans, July 22d, 1870.

CHAS. CLARBORNE,
Clerk.

EXHIBIT Y.

Libel in Porter v. Colson.

To the honorable the judge of the district court of the United States of America for the district of Louisiana:

William J. Porter, who is a citizen of New York, and who then resided and carried on commercial business under the name and firm of Porter & Co., exhibits this libel against the brig C. C. Colson, her boats, tackle, apparel, and furniture, now lying at the port of New Orleans, whereof Julius A. Pratt lately was master, and against all persons lawfully intervening for their interest therein, and thereupon said libellants alleges and propound' as follows, to wit:

That on or about the 29th March, 1869, the said brig, whereof the said Pratt was master, being then in the port of New Orleans, and designed on a voyage upon the high seas from New Orleans to Liverpool, England, and within the admiralty and maritime jurisdiction of this court; John C. Forbes being the owner of certain one hundred and thirty-nine bales of cotton of the value of thirteen thousand nine
173 hundred dollars, made a contract with the said Julius A. Pratt, as said master, whereby he agreed, in consideration of certain freight, to convey the said cotton from New Orleans to Liverpool, England, and there to deliver the same in good order to the order of said shippers or to his assigns, and accordingly on the 1st day of April, 1869, the said John C. Forbes delivered to said master the said cotton in good order, and received from him a bill of lading therefor; that subsequent to the execution of said bill of lading, said shipper drew two bills of exchange against said shipment of 139 bales of cotton; said bills are drawn by John C. Forbes to his own order upon libellant, one payable at sight; one said bill is dated April 3d, 1869, is for four thousand dollars; one is dated 1st April, 1869, is for four thousand dollars; said bills are herewith filed as part thereof; that accordingly said bill of lading accompanied and was attached to said bill of exchange; that on the faith and credit of said bill of lading, said libellant accepted and paid said bills of exchange at maturity, whereupon, according to mercantile custom, said bills of lading, duly indorsed by said shippers, were transferred to and delivered to the libellant; that he is the bona-fide owner of such bills of lading for value; that said bills of exchange were accepted and paid at maturity by the libellant, with no funds or effects of said drawer of said bills of exchange in libellants' hands at the time of said acceptance and at the time of said payment, nor was he indebted to said drawer of said bills of exchange at the time of said acceptance and payment.

That the master of the said brig, not regarding his duty in that respect nor his said undertaking to convey and deliver the said cotton as aforesaid, did not so convey and deliver the same, but on the contrary thereof entirely failed to do so.

That the voyage of said brig was completely broken up and abandoned by the said master after the receipt of said cotton, without any lawful excuse therefor; that he has entirely failed to account for or de-
174 liver the said cotton; that by and through his gross misconduct in the premises said cotton has become and is totally lost to the libellant, in consequence whereof he has sustained damages to the amount of $3,900.

That besides said bill of lading libellant is the holder and owner of bills of lading executed by said master for 714 bales of cotton, executed

by him and delivered to said Forbes, which bills of lading are filed in the suit of W. J. Porter & Co. vs. F. J. Heron et al., No. — of the docket of the circuit court, which bills of lading are specially referred to for fuller explanation and greater certainty, no portion of which cotton has been accounted for by said master or delivered to libellant, and said bills of lading are set forth in the Schedule A hereto attached as part hereof; that subsequent to the execution of said bills of lading bills of exchange were drawn upon libellant; that with said bills of exchange said bills of lading were forwarded, attached to and accompanying said bills of exchange; that on the faith of said bills of lading libellant accepted and paid said bills, whereupon, according to mercantile custom, said bills of lading, duly indorsed, were transferred to and delivered to the libellants. The amount so paid by libellant is set forth in schedule B, hereto attached as part hereof.

That at time of the transaction herein stated libellant was doing business in New York, having no partner, under and firm of W. J. Porter & Co.; that he alone is interested in said bills of lading and in the transactions herein stated.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the court.

Wherefore the libellant prays that process, in due form of law, may issue against the said brig, her boats, tackle, apparel, and furniture, and that this honorable court will pronounce for the damages aforesaid and decree the same to be paid with costs, and for such other and further
175 relief as the court is competent to give in the premises and case requires.

(Signed) E. W. HUNTINGTON,
HENRY C. MILLER,
Proctors.
W. J. PORTER.

Sworn to and subscribed before me this 10th day of May, 1869.
(Signed) CHAS. CLARBORNE,
U. S. Comr.

Let admiralty process issue as prayed for.
May 10th, 1869.
(Signed) R. LOEW,
Deputy Clerk.

CLERK'S OFFICE.

A true copy.
New Orleans, June 24th, 1870.

R. LOEW.
Deputy Clerk.

EXHIBIT Y.

Schedule A, showing bills of lading held by libellants. Annexed to and referred to in libel in Porter v. Colson, 9410.

Date.	No. of bales.	Marks.
April 12, 1869	141	J. C. F.
March 16, 1869	150	A J. 3; B Z, 59; D E, 12; E O, 19; X I X, 40; B U D, 2; F R S, 13; P I N, 2.
April 8, 1869	1	S.
March 16, 1860	107	C V, 107.
March 20, 1869	9	D D, 4; R K, 5.
March 27, 1879	221	Z, 47; W, 136; T 32; S, 6.
April 8, 1869	1	S.
176 April 1, 1869	139	O, 63; F, 26; L, 36; S, 14.
March 14, 1869	65	J S, 30; S, 15; P P, 13; J S, 7.
	834	

(Indorsed:) 9410.

Schedule B, showing bills of exchange accepted and paid by W. J. Porter & Co. Annexed to same.

One bill dated 25th March, 1869, drawn by Waddy Thompson, per C. A. Janvier, at sight, for	$7,500 00
One bill dated 8th April, 1869, drawn by same at sight for	6,900 00
One drawn by same dated 3d April, 1869, at five days' sight for	10,000 00
One drawn by same, dated 30th March, 1869, at sight for	963 83
One drawn by same, dated 25th March, 1869, at five days' sight for	20,000 00

The following sight bills of J. C. Forbes:

One dated 22d March, 1869, for	1,591 00
One dated 18th March, 1869, for	10,700 00
One dated 18th March, 1869, for	15,000 00
One dated 27th March, 1869, for	22,100 00

All drawn upon and paid by W. J. Porter & Co.

Documents referred to in commissioner's report in Porter vs. Colson, 9,410:

Certificate from collector.

UNITED STATES CUSTOM-HOUSE,
Collector's Office, New Orleans, February 5, 1870.

I hereby certify that the records of this office show that Francis H. Page was sole owner of brig Crista C. Colson on the 18th day March, 1869.

(Signed) C. E. INGALLS,
Deputy.

177 *Act of mortgage.*

UNITED STATES OF AMERICA, STATE OF LOUISIANA,
Parish of Orleans, city of New Orleans:

Be it known that on this day, before me, Ferdinand Butler Earhart, a notary public in and for the parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, personally came and appeared Francis H. Page, of this city, who declared that he is justly and truly indebted unto Waddy Thompson, of this city, in the full sum of fifteen thousand dollars, which he, the said Waddy Thompson, has this day loaned and advanced unto him in ready current money of the United States of America, and for the re-imbursement of which said sum loaned and advanced as aforesaid the said Francis H. Page has furnished a certain promissory note, dated this day, drawn and subscribed by him, the said Francis H. Page, to his order, and by him indorsed, said promissory note being for the sum of fifteen thousand dollars, and made payable twelve months after date, with interest at eight per centum per annum from date until paid, which said promissory note, after being duly paragraphed ne varietur by me, notary, in order to identify the same herewith, was handed over and delivered to *to* the said Waddy Thompson, who being here present, accepting these presents for himself, his heirs and assigns, and acknowledging the receipt thereof: Now, in order to secure the ufll and final payment of said promissory note, and all eventual interest which may accrue thereon, the said Francis H. Page does by these presents especially mortgage, effect, and hypothecate unto the said Waddy Thompson, and such person or persons who may eventually be the holder or holders of said promissory note, that certain brig called the Crista C. Colson, of New Orleans, together with all and singular her masts, yards, sails, rigging, anchors, boats, chains, cables, tackle, apparel, and appurtenances, which said vessel is registered in the port of New Orleans in the words and figures following, to wit:

178 "No. 30, permanent.—In pursuance of an act of Congress of the United States of America, entitled 'An act concerning registering and recording of ships or vessels,' approved December 31, 1792, and of 'An act to regulate the admeasurement of tonnage of ships and vessels of the United States,' approved May 6th, 1864, Francis H. Page of New Orleans, State of Louisiana, having taken or subscribed the oath required by said act, and having sworn that he is a citizen of the United States, and only owner of the ship or vessel called the Crista C. Colson, of New Orleans, whereof Julius A. Pratt is at present master, and a citizen of the United States, as he hath sworn, and that said ship or vessel was built at Calais, in the State of Maine, A. D. 1860, off. No. 5300, H. F. M. S., as per register No. 6, issued and dated at Searsport, September 5, 1867, now surrendered property and district charged.

"And said register No. 6 having certified that the said ship or vessel has two decks and two masts, and that her length is 102 feet $\frac{45}{100}$; under tonnage deck 281 tons $\frac{41}{100}$; her breadth 26.90; between decks above ditto; her depth 14 $\frac{33}{100}$; enclosures on upper deck 18.82; that she measures three hundred $\frac{23}{100}$ (300 $\frac{23}{100}$) tons; that she is a brig, has square stern and a billed head.

"And the said Francis H. Page having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said brig has been duly registered at the port of New Orleans.

"Given under our hand and seal at the port of New Orleans this 19th March, in the year one thousand eight hundred and sixty-nine.

(Signed) "J. A. GRAHAM,
"*Assistant Registrar.*

[SEAL] "W. C. GRAY,
"*Special Deputy Collector.*

"JONA WHITE,
"*Deputy Naval Officer.*"

179 The said vessel and appurtenances so to remain mortgaged and hypothecated until the full and final payment of the aforesaid promissory note.

The said mortgagor hereby binding himself and his heirs not to sell, alienate, or encumber the same to the prejudice of these presents; and the said mortgagor further declares that he does by these presents consent, agree, and stipulate that in the event of the said promissory note not being paid punctually at its maturity, it shall be lawful for, and he does hereby authorize the said mortgagee, or any other holders thereof, to cause all and singular the hereinbefore-described vessel and appurtenances to be seized and sold under executory process, (issued by any competent court,) without appraisement, to the highest bidder, payable cash, the said mortgagee hereby expressly dispensing with all and every appraisement thereof, and by these presents waiving and renouncing the benefit of appraisement, and of all laws or parts of laws relative to the appraisement of movable or immovable property, effects, &c., seized and sold under executory process or other legal process, the said mortgagor hereby confessing judgment in favor of said mortgagee, and such person or persons who may eventually be the holder or holders of said promissory note, for the full amount thereof, charges and expenses whatsoever; and the said mortgagee further declares that he does by these presents bind and obligate himself and his heirs to pay and re-imburse unto the said mortgagee, or the holder of said note, all such attorney's fees, costs, and charges that may be incurred in the event of the nonpayment of the said promissory note at maturity, said attorney's fees, however, to be fixed at five per cent. Now, to secure the faithful performance of the foregoing obligation for the payment of the said lawyer's fees, charges, and expenses, this mortgage is further extended in favor of the said mortgagee, or the holder or holders of said promissory note.

Thus done and passed in my office, in the city of New Orleans, in the presence of Andrew J. Young and John C. Forbes, lawful wit-
180 nesses, who hereunto sign their names with the said parties, and me, notary, this twenty-third of March, A. D. one thousand eight hundred and sixty-nine.

(Signed) FRANCIS H. PAGE.
WADDY THOMPSON.
A. J. YOUNG.
JOHN C. FORBES.
F. B. EARHART, *N. P.*

STATE OF LOUISIANA,
Parish of Orleans:

I hereby testify the foregoing to be a true copy of the original act, extant in my current registry. A United States internal-revenue stamp of the denomination of fifteen dollars ($15) being thereto affixed and cancelled.

In faith whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, this twenty-fourth day of March, A. D. 1869.

[SEAL.] (Signed) F. B. EARHART, *N. P.*

[5c. stamp, cancelled.]

(Indorsed:) Custom-house, New Orleans. Received for record this 25th day of March, 1869, at 20 minutes past 10 o'clock a. m. Recorded in book B, page 280. Cliften Hellen, register of sales.

Depositions before N. Y. commissioner.

W. J. PORTER & CO. *vs.* BRIG C. C. COLSON. } No. 9410. U. S. district court.

Interrogatories to be propounded to William J. Porter, G. S
181 Hamilton, W. B. Meeker, Andrew Reed, W. B. Duncan, and other witnesses for libellants, residing in New York, to be answered under the annexed commission:

First. What is your name and residence?

Second. Have you any knowledge of a certain bill of lading purporting to be for one hundred and thirty-nine bales of cotton, shipped by J. C. Forbes per brig C. C. Colson? If yea, state when, where, in whose hands, and under what circumstances you first saw it. Was or was not said bill of lading ever assigned, transferred, or delivered to any one? If yea, state when, where, by whom, to whom, and under what circumstances the same was so assigned, transferred, or delivered, and all you know relative thereto. If you say said bill of lading was so assigned, transferred, or delivered to any one, state whether or not there was any consideration for such transfer, assignment, or delivery; and, if yea, state what was said consideration, to whom, and by whom paid or given, when and where the same was paid or given, and all you know relative thereto, fully and particularly. Annex said bill of lading, if in your possession. Is there any indorsement of said bill of lading? If yea, when and by whom was it placed there? Who is now the holder or holders of said bill of lading?

Third. Have you any knowledge of two certain bills of exchange drawn by J. C. Forbes on W. J. Porter & Co., payable at sight, 1 for $5,000, dated 1st April, 1869, and 1 for $4,000, dated 3d April, 1869? If yea, state when, where, in whose hands, and under what circumstances you first saw them. Have you any knowledge of the acceptance or payment of said bills? If yea, state when, where, by whom, to whom the same were paid, and all you know relative thereto. What was the inducement and consideration, if any, for the acceptance and payment of said bills?

Fourth. Has or has not said 139 bales of cotton ever been delivered by the master of the brig C. C. Colson? What is the value of said 139 bales of cotton?

182 Fifth. Have you any knowledge of any other bills of lading, purporting to be for bales of cotton shipped per brig C. C. Colson by J. C. Forbes? If yea, state when, where, in whose hands, and under what circumstances you first saw them. Have you any knowledge of any assignment, transfer, or delivery of said bills of lading to any one? If yea, state when and where, by whom and to whom, the same was transferred, assigned, or delivered, and all you know relative thereto. If

you say said bills of lading were so assigned, transferred, or delivered to any one, state whether there was or was not any consideration for said transfer, assignment, or delivery; and, if yea, state what was that consideration, to whom and by whom paid or given, when and where the same was paid or given, and all you know relative thereto, fully and particularly. Annex said bills of lading, if in your possession. Is there any indorsement of said bills of lading? If yea, when and by whom were they placed upon said bills? Was or was not the property called for by said bills of lading ever delivered by the master of said brig? What is the value of said property? Who is the holder or holders of said bills of lading?

Sixth. Have you any knowledge of any other bills of exchange drawn upon W. J. Porter & Co. by Waddy Thompson or J. C. Forbes? If yea, state when, where, in whose hands, and under what circumstances you first saw them. Have you any knowledge of the acceptance or payment of said bills? If yea, state when, where, by whom, to whom the same were paid, and all you know relative thereto. What was the indorsement and consideration, if any, for the acceptance and payment of said bills?

Seventh. If you say the said bill of exchange referred to in the 3d and 6th interrogatories were paid or accepted by any person or persons, state whether said person or persons had or had not, at the time of acceptance or payment, any funds or effects in his or their hands of or belonging to the drawer of said bills; if yea, state the nature
183 and amount thereof fully and particularly. State, if you have not already, how the said bills came to be accepted or paid, and the inducement and consideration thereof, fully and particularly. If you say the person or persons who accepted or paid said bills had no effects or funds of or belonging to the drawer or drawers of said bills at the time of their acceptance or payment, state whether the said drawer or drawers has not re-imbursed the amount of said bills, or any portion thereof, to said person or persons who accepted or paid said bills. Who composed and constituted W. J. Porter & Co. at the time of the acceptance and payment of the bills herein referred and at the time of the transaction herein referred to?

Eighth. State anything else you may know of service to libellants.

(Signed) E. W. HUNTINGTON,
HENRY C. MILLER,
Proctors for Libellants.

Cross-interrogatories waived, with objections to form and manner of executing commission, legal exceptions only reserved.

(Signed) W. H. ROGERS,
S. P. BLANC,
Proctors for Roby, Intervenor.
SEMMS & MOTT,
Proctors of Schaefer & Co.
P. S. MORGAN,
United States Attorney.

District court of the U. S. of America for the eastern district of Louisiana, holding session in the city of New Orleans.

To Nathaniel Appleton, esq., or any Louisiana commissioner in New York:

Know ye, that reposing special trust and confidence in your in-

184 tegrity and ability, we hereby authorize and require you that you call and cause to come before you W. J. Porter, G. E. Hamilton, and Andrew Reed, and them duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case pending in this court wherein W. J. Porter & Co. are libellants, and claimants of brig C. C. Colson is defendant; and the same examinations as taken and reduce to writing you certify under your hand and seal and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Edward H. Durell, judge of the district court of the United States of America for the district of Louisiana, at the city of New Orleans, this 15th day of June, A. D. 1869.

(Signed) R. LOEW,
Deputy Clerk.

In the district court of the U. S. for E. D. of Louisiana, at New Orleans.

W. J. PORTER & Co.
vs.
THE BRIG C. C. COLSON AND OWNERS.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that I. William V. Archer, a commissioner of the State of Louisiana, in the State and city of New York, residing in said city of New York, duly appointed and commissioned by the governor of the said State of Louisiana, duly sworn and authorized under and by virtue of the laws of the State of Louisiana to take depositions and affidavits to be used and read in the courts of that State, have, on

185 the eleventh day of December, A. D. 1869, acting by virtue of and in obedience to the inclosed and annexed commission, issued out of the district court of the United States for the eastern district of Louisiana, in the case entitled W. J. Porter & Co. against the brig C. C. Colson and owners, which said commission bears date September 11, 1869, cited and caused to come before me, William J. Porter, a witness on behalf of the libellants, at the office of Charles Nettleton, No. 117 Broadway, in the said city of New York, and he being then and there by me first carefully examined, cautioned, and duly sworn on the Bible to declare the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories hereto attached, to be propounded to him and others in the before-mentioned case, made answer as follows to the several interrogatories aforesaid, to wit:

First. To interrogatory first he answered: My name is William J. Porter; I reside in the city of New York.

Second. To interrogatory second witness answered: I have knowledge of the bill of lading referred to in the second interrogatory. I first saw it at my place of business, No. 142 Pearl street, in the city of New York, on the 5th day of April, 1869, when I received it by mail from Waddy Thompson, at New Orleans; said bill of lading was transferred and delivered to me by Waddy Thompson, at the city of New York, on the 5th day of April, 1869, when I received it from him by mail, as I have just stated; there was a consideration for the said transfer and delivery of the said bill of lading to me; said consideration was the acceptance and payment of two bills of exchange drawn by J. C. Forbes on W. J. Porter & Co. against said shipment of 139 bales cotton per brig C. C. Colson,

payable at sight, one for $5,000, dated 1st April, 1869, and one for $4,000, dated 3d April, 1869; and said transfer to me was also intended by said Thompson to cover a balance due from him to me of $6,243 $\frac{27}{100}$;
186 said bill of exchange for $5,000 was presented to me at my office, No. 142 Pearl street, in the city of New York, by the Bank of New York National Banking Association, commonly called the Bank of New York, on the 5th day of April, 1869, and I accepted said bill, and at the city of New York, on the said 5th day of April, 1869, I paid the amount of said bill to the said Bank of New York; said bill of exchange for $4,000 was presented to me at my said office by the said bank on the 7th day of April, 1869, and I accepted said bill of $4,000, and at the city of New York, on the said 7th day of April, 1869, I paid the amount thereof to the said Bank of New York; I am now the holder and owner of the said bill of lading inquired about in the second interrogatory, and I now produce and annex it to this deposition, marked "Exhibit A;" I also produce and annex to this deposition the said two bills of exchange, one for $5,000, dated 1st April, 1869, and one for $4,000, dated 3d April, 1869, which are annexed hereto, and marked respectively "Exhibit B and C;" there are indorsements on said bill of lading; when it was transferred and delivered to me as I have stated, the said bill of lading had thereon the indorsement, "Deliver to the order of W. J. Porter & Co., John C. Forbes," which it now bears; said indorsement is genuine; the signature "John C. Forbes" to said indorsement is the genuine handwriting and signature of John C. Forbes, then of New Orleans; I have seen said John C. Forbes write; the other portion of the said indorsement, "Deliver to order of W. J. Porter & Co.," is in the handwriting of C. A. Janvier, who was in March and April, 1869, the book-keeper and confidential clerk of the said Waddy Thompson, of New Orleans; I have seen said Janvier write; the said bill of lading is also indorsed, "Deliver to Baring Bros. & Co., or order," and below that is the indorsement, "W. J. Porter & Co.;" said indorsement, "W. J. Porter & Co." is my handwriting; I wrote it on said bill of lading on the 5th day of April, 1869, when I obtained an advance on said bill of lading from Duncan, Sherman & Co., bankers, at the city of New York, and delivered said
187 bill of lading to them; said indorsement, "Deliver to Baring Bros. & Co., or order," is in the handwriting of Elick Bulinger, a clerk of said Duncan, Sherman & Co.; I have often seen said Bulinger write; I do not know on what date the said indorsement to Baring Bro. & Co. was placed on said bill; it was after I delivered it to Duncan, Sherman & Co., on or about the 18th day of April, 1869, after I had learned that the brig C. C. Colson was seized at New Orleans, and that a fraud had been committed in connection with the bills of lading for cotton by said vessel; Duncan, Sherman & Co. relinquished and gave up to me all lien and claim of theirs upon said bill of lading, and agreed to redeliver same to me when it came back to them from Baring Bro. & Co., and they did redeliver said bill to me on or about the 5th day of May, 1869.

Third. To interrogatory third witness answers: I have knowledge of the two bills of exchange inquired about; they are the two bills, one for $5,000, and one for $4,000, to which I referred in my answer to the preceding interrogatory, and which I have produced and annexed to the deposition, and marked respectively "Exhibit B and C." I first saw said bill of exchange marked "Exhibit B," dated 1st April, 1869, for $5,000, at my office, No. 142 Pearl street, in the city of New York, on the 5th day of April, 1869, when it was presented by the Bank of New York National Banking Association to me for acceptance and

payment; I first saw said bill for $4,000 marked "Exhibit C" at my office on the 7th day of April, 1869, when it was presented to me by said bank for acceptance and payment; I know of the acceptance and payment of said two bills of exchange; they were accepted and paid by me to the said Bank of New York, as stated in my answer to the preceding interrogatory; the inducement and consideration for the acceptance and payment of said bills by me was the bill of lading for 139 bales of cotton shipped by J. C. Forbes, per brig C. C. Colson, which I received
188 through the mail, as I have stated in my answer to the preceding interrogatory; at the time of my said acceptance and payment I had no funds or effects of the drawer of said bills, or of any other party to said bills, and no effects or means for the payment of said bills have since been furnished me; the transfer to me of the said bill of lading was the only inducement for said acceptance and payment.

Fourth. To interrogatory fourth witness answers: Said 139 bales of cotton have never been delivered, or any portion of them; said cotton, if of the grade of low middling, which was the average of the cotton shipped through Waddy Thompson, would now be worth twenty-four and one-half cents per pound, at which rate said 139 bales, taking the weight as given in the margin of said bill of lading, would now be of the value of sixteen thousand six hundred and sixty-two dollars and ninety-four cents.

Fifth. To interrogatory fifth witness answers: I have knowledge of various other bills of lading purporting to be for bales of cotton shipped per brig C. C. Colson by J. C. Forbes, namely: A bill of lading dated March 15th, 1869, for 150 bales of cotton; a bill of lading dated March 18th, 1869, for 107 bales of cotton. I first saw these two bills of lading at my office, No. 142 Pearl street, in New York City, on the 22d day of March, 1869, on which day they were brought there by a clerk and messenger of the Bank of New York National Banking Association, with two bills of exchange, both dated March 18, 1869, and drawn by John C. Forbes on W. J. Porter & Co., 142 Pearl street, New York, at sight; one for $15,000, and one for $10,700, which were then and there presented by said messenger for acceptance and payment, upon condition of which acceptance and payment the said two bills of lading were to be transferred to me; said bills of lading were transferred and delivered by the said Bank of New York to me, at the city of New York, on the 22d March, 1869, on which day I paid to said bank the amount of said two bills of exchange, which accompanied said bills of lading.
189 The consideration of said consignment and delivery of said two bills of lading to me was my acceptance and payment of said two bills of exchange; another of said bills of lading, purporting to be for cotton per C. C. Colson, is one dated March 20th, 1869, for nine bales; this I first saw at my said office on the 26th March, 1869, when I received it by mail from Waddy Thompson, of New Orleans; said bill of lading was transferred and delivered to me by Waddy Thompson, at the city of New York, on the 20th day of March, 1869, when I received it by mail from him as I have stated; there was a consideration for said transfer and delivery; on the 26th day of March, 1869, the said Bank of New York presented to me for payment a draft, dated New Orleans, March 22d, 1869, drawn by J. C. Forbes on W. J. Porter & Co., 142 Pearl street, New York, at sight, for $1,591; said bill of exchange purporting to be drawn against a shipment of 266 bales of cotton per C. C. Colson, said 266 bales being made up of 150 bales and 107. I have before referred to the said nine bales; on the 26th day of March, 1869, I paid to said banks the amount of said draft for $1,591, which payment

and the payment of the two bills I have spoken of, one for $15,000 and one for $10,700, was the consideration of said transfer and delivery of said bills of lading for nine bales to me; another of said bills of lading is dated 27th March, 1869, for 221 bales; this I first saw at my said office, on the 1st day of April, 1869, when it was brought there by a messenger of the said Bank of New York, with a bill of exchange dated New Orleans, 27th March, 1869, drawn by J. C. Forbes on W. J. Porter & Co., 142 Pearl street, New York, at sight, for $22,100, which bill of exchange was then and there presented by said messenger for acceptance and payment; said bill of lading for 221 bales was transferred and delivered by the said Bank of New York to me, at the city of New York, on the 1st day of April, 1869, on which day I paid to said bank the amount of said bill of exchange for $22,100; the consideration of said assignment and delivery of said bill of lading for 221 bales to
190 me was my acceptance and payment of said draft for $22,100; another of said bills of lading is dated 8th April, 1869, for one bale; this I first saw at my said office on or about the 13th day of April, 1869, when I received it by mail from Waddy Thompson, at New Orleans; this bill of lading was sent to me to cover a bale which was included in the invoice of the shipment referred to in the second interrogatory, and in my answer thereto as a shipment of 139 bales; the invoice was for 140 bales; the bill of lading for only 139 bales; another of said bills of lading is dated April 12, 1869, for 141 bales. I first saw this bill of lading, at my said place of business, on or about the 17th day of April, 1869, when I received by mail, enclosed in a letter from Waddy Thompson, at New Orleans, dated 12th April, 1869, which letter I now produce, and annex to the deposition marked "Exhibit D;" said letter is in the handwriting of C. A. Janvier, the book-keeper and confidential clerk of Waddy Thompson, of New Orleans; a sight-draft of J. C. Forbes on W. J. Porter & Co., for $15,000, was also received by me enclosed in said letter, dated 12th April, 1869, from Waddy Thompson; the draft of Waddy Thompson, dated 3d April, 1869, for $10,000, payable five days after sight, referred to in said letter, was presented to me by the Bank of New York for acceptance and for payment. I accepted same, and on the 15th day of April, 1869, I paid the amount thereof to said bank; the draft of Waddy Thompson, dated 3d April, 1869, for $10,000, payable ten days after sight, referred to in said letter, was presented to me on the 7th day of April, 1869, by the said Bank of New York, for acceptance, and I accepted same, but I did not pay said bill when it became due, because I had then heard of the seizure of said brig C. C. Colson, and from information I received had reason to believe that said bill of lading for 141 bales was false and fraudulent, for which reason also I returned said draft for $15,000 to Waddy Thompson, on or about 20th April, 1869; said bill of lading for 141 bales of cotton, and said draft for $15,000, were delivered to me in consideration that I should accept and pay
191 said two bills of exchange of $10,000 each; I now produce and annex to this deposition all the bills of lading referred to in this my answer the fifth interrogatory: Two bills of each shipment, except the one for 141 bales, and all the bills of exchange referred to in this answer, except said bill dated 3d April, 1869, for $10,000, payable ten days after sight, which was not paid by me, and except said bill for $15,000, which I have just stated to have been returned by me to Waddy Thompson; said bills of lading and bills of exchange referred to are attached and marked as exhibits as follows, to wit: Bill of lading dated March 16, 1869, for 150 bales, Exhibit E; bill of lading dated March 18, 1869, for 107 bales, Exhibit F; two bills of exchange dated respectively March 18, 1869,

drawn by John C. Forbes on W. J. Porter and Co., at sight, for $15,000 and $10,700, Exhibit G & H respectively; bill of lading dated March 20th, 1869, for nine bales, Exhibit I; draft drawn by J. C Forbes on W. J. Porter & Co., $1,591, Exhibit J; bill of lading dated March 27, 1869, 221 bales, Exhibit K; bill of exchange drawn by J. C. Forbes on W. J. Porter & Co., $22,100, Exhibit L; bill of lading dated April 8, 1869, for one bale, Exhibit M; bill of lading dated April 12, 1869, 141 bales, Exhibit N; draft of Waddy Thompson on W. J. Porter & Co. dated April 3, 1869, at five days' sight, for $10,000, Exhibit O; there are various indorsements upon the said bills of lading; each of them bears the indorsement "J. C. Forbes" or "Jno. C. Forbes," which indorsement was placed upon said bills at the respective times when the same was transferred and delivered to me; said indorsements "Jno. C. Forbes" and "J. C. Forbes" are the proper handwriting and signatures of John C. Forbes, then of New Orleans; I have seen said John C. Forbes write, and have seen him sign his name; said bill of lading for nine bales and said bill of lading for one bale is each indorsed "Deliver to W. J. Porter & Co.," above the indorsement "J. C. Forbes," and the said bill of lading for 141 bales is indorsed "Deliver to order of W. J. Porter & Co.," above the indorsement
192 "Jno. C. Forbes." These last-mentioned indorsements, "Deliver to W. J. Porter & Co.," and "Deliver to order of W. J. Porter & Co." were upon said bills when the same were transferred and delivered to me, and are in the handwriting of C. A. Janvier, the bookkeeper and confidential clerk of the said Waddy Thompson; I have seen said Janvier write; one of said bills of lading for each shipment is also indorsed "W. J. Porter & Co.," and one for each shipment bears the indorsement, "Deliver to Messrs. Baring Bro. & Co." or order, above the indorsement "Jno. C. Forbes," or "W. J. Porter & Co.;" said indorsement "W. J. Porter & Co.," upon said bills of lading, are in each instance in my own handwriting, and were placed on said bills in each case very soon after I first received the bill of lading, and upon the occasion of my obtaining advances upon said bill of lading from Duncan, Sherman & Co., bankers, in the city of New York, when I delivered said bills of lading to them; the said indorsements to Baring Bro. & Co. are in the handwriting of Elick Beilinger, a clerk of said Duncan, Sherman & Co.; I have seen said Beilinger write; I do not know on what dates said indorsements to Baring Bro. & Co. were placed on said bills; it was after I delivered them to Duncan, Sherman & Co.; on or about the 18th day of April, 1869, after I had learned that the brig C. C. Colson had been seized at New Orleans, and that a fraud had been committed in connection with the bills of lading for cotton by said vessel, Duncan, Sherman & Co. relinquished and gave up to me all lien and claim of theirs on said bill of lading, and agreed to redeliver same to me when they should be received by them from Baring Bro. & Co., and they did redeliver said bills of lading to me at different times, between the 20th day of April and the 5th day of May, 1869; none of the property called for by said bills of lading has ever been delivered; I am the holder and owner of all said bills of lading; said cotton, if of the grade of low middling, would now be worth twenty-four and one-half cents per pound, at which rate the 629 bales called for by the bill
193 of lading referred to in the answer, taking the weight as 293,353 pounds, as given in the margin of said bills, would now be of the value of $71,871.48.

Sixth. To interrogatory sixth witness answers: I have knowledge of various bills of exchange of the description inquired about in the sixth

interrogatory; I have mentioned several of them in my answer to the fifth interrogatory, and have produced and annexed same to this deposition, excepting the bill of $10,000, dated 3d April, 1869, payable at ten days after sight, which I did not pay, and the bill for $15,000, which I returned to Waddy Thompson as I have stated; I first saw said bills of exchange at my office, No. 142 Pearl street, in the city of New York, at the respective times when, as I have stated in my answer to said fifth interrogatory, they were presented to me for payment by the Bank of New York, or were received by me by mail, and under the circumstances detailed in said answer; I have stated all the particulars of the acceptance and payment of the said bills of exchange, and of the inducement and consideration for such acceptance and payment in my answer to said fifth interrogatory; the inducement and consideration for the acceptance and payment of said bills of exchange was the transfer and delivery to me of the several bills of lading referred to in my said answer to said fifth interrogatory, and annexed to this deposition; said bills were accepted and paid, with no funds or effects of the drawers of the bills, or of any other party thereto; besides the bills of exchange I have already mentioned, there was one for $7,500, dated 25th March, 1869, drawn by Waddy Thompson on W. J. Porter & Co., at sight, purporting to be drawn against a shipment of 65 bales of cotton per brig C. C. Colson; I first saw this bill of exchange at my said office in the city of New York, on the 29th day of March, 1869, when it was brought there by a clerk and messenger of the Bank of New York National Banking Association, with a bill of lading, dated New Orleans, 24th March, 1869, pur-
194 porting to be for 65 bales of cotton shipped by James Seymour on board the brig C. C. Colson, and bearing the indorsement "James Seymour;" said bill of exchange for $7,500 was then and there presented by said messenger for acceptance and payment, and on the said 29th March, 1869, I accepted said bill for $7,500, and paid to said Bank of New York the amount thereof, and thereupon the said bill of lading for 65 bales was transferred and delivered to me by the said bank; the inducement and consideration for the acceptance and payment by me of said bill of exchange was the transfer and delivery to me by the said bank of the said bill of lading for 65 bales of cotton; I now produce the said draft for $7,500, and bill of lading for 65 bales, and annex same to this deposition; the said bill of exchange for $7,500 is annexed hereto as Exhibit P, and said bill of lading is annexed hereto as Exhibit Q; there is also a bill of exchange for $20,000, dated 25th March, 1869, drawn by Waddy Thompson on W. J. Porter & Co. at five days after sight, and a bill of exchange for $30,000, dated 27th March, 1869, drawn by Waddy Thompson on W. J. Porter & Co. at three days after sight; I first saw said bill for $20,000 at my said office on the 29th day of March, 1869, when it was presented by a messenger from Duncan, Sherman & Co., of this city, bankers, for acceptance; it was accepted on that day, and on the 6th day of April, 1869, I paid the amount of said bill to said Duncan, Sherman & Co.; I now produce said bill for $20,000 and annex it to this deposition, marked "Exhibit R;" I first saw said bill for $30,000 at my said office on the 1st day of April, 1869, when it was presented by a messenger of said Bank of New York for acceptance; it was then accepted, and on the 7th day of April, 1869, I paid the amount thereof to said bank; I produce and annex said bill for $30,000 to this deposition, marked "Exhibit S;" the consideration for the payment of said two bills of exchange was the delivery to me by said Waddy Thompson of a draft of J. C. Forbes on

Adolphus C. Schaefer & Co. for $6,400, which was paid, a draft for $963.83, of which I shall speak presently, and the delivery
195 to me of a bill of lading for 310 bales cotton per steamer George Cromwell; the balance of said two drafts for $20,000 and $30,000, namely, the sum of $16,243 $\frac{27}{100}$, was not provided for, and has never been paid; said draft for $963 $\frac{83}{100}$ was worthless, and said 310 bales of cotton per steamer George Cromwell yielded me for application on amount of these drafts not over $35,000; there is also a bill of exchange at sight for $963 $\frac{83}{100}$, dated 30th March, 1869, drawn by Waddy Thompson on W. J. Porter & Co., to their order, purporting to be drawn against shipment of 221 bales cotton per C. C. Colson. This bill I received by mail from said Waddy Thompson on or about the 4th day of April, 1869, to be credited against the draft dated 27th March, 1869, drawn by Waddy Thompson on or about the 4th day of April, 1869, to be credited against the draft dated 27th March, 1869, for $30,000, of which I have spoken; it was part of the consideration of my acceptance and payment of said $30,000 draft. I now produce said bill of exchange for $963 $\frac{83}{100}$, and annex same to this deposition, marked "Exhibit T." The bill of lading purporting to be for 65 bales of cotton shipped by James Seymour, of which I have spoken in this answer, bore when I first redeemed it the indorsement of "James Seymour," which it *how* bears. On or about the 29th day of March, 1869, I obtained an advance on said bill of lading from Duncan, Sherman & Co., and delivered said bill of lading to them. The indorsement "Deliver to Messrs. Baring Bro. & Co. or order," which said bill bears, was placed thereon after I delivered said bill to Duncan, Sherman & Co.; it is in the handwring of Elick Beilinger, one of their clerks On or about the 18th day of April, A. D. 1869, Duncan, Sherman & Co. relinquished to me all lien and claim on said bill of lading, and on or about the 3d day of May, 1869, re-delivered said bill to me. I am now the holder and owner thereof. The present value of said cotton would be $7,985 $\frac{28}{100}$. There is also a bill of exchange drawn by Waddy Thompson on W. J. Porter & Co., dated 8th April, 1869, for $6,900, payable at sight, which I now produce and annex to this deposition, marked "Exhibit A A." I first saw it at my office on the 12th day of April,
196 1869, when it was presented by Duncan, Sherman & Co. for payment. I took up said bill on that day; they charged me with the amount thereof in their account with me. Said bill for $6,900 has no connection with shipments by brig C. C. Colson.

Seventh. To interrogatory seventh witness answers: At the time of my acceptance and payment of the bill of exchange referred to in the third and sixth interrogatories I had in my hands no funds or effects of or belonging to the drawers of said bills, or of any other party thereof; I have already stated how said bills came to be accepted and paid, and the inducement and consideration thereof. They were accepted and paid because I relied upon the cotton covered by the bills of lading against which they were drawn, or which were sent forward to meet them to re-imburse me. I have not been re-imbursed the amount of said bills, or any portion thereof, by the drawer or drawers of said bills, or by any one, except that I received about $41,400 on account of the two drafts, one for $20,000 and one for $30,000, as I have stated in my answer to the sixth interrogatory. At the times of the acceptance and payment of said bills inquired about in said interrogatories and at the time of the transactions referred to in these interrrogatories, I alone composed and constituted W. J. Porter & Co.; there was no other member of said firm.

Eighth. To interrogatory eighth witness answers: I think of nothing else of importance in connection with these matters.

(Signed) W. J. PORTER.

Sworn to and subscribed before me on the eleventh day December, A. D. 1869, at the place first aforesaid.

[SEAL.] (Signed) WILLIAM V. ARCHER,
Commissioner for Louisiana in New York.

197 Next came WILLIAM B. MEEKER, of said city of New York, a witness on behalf of the plaintiff in the above-entitled cause, at the office of Charles Nettleton, 117 Broadway, in the said city of New York, on said 11th day of December, A. D. 1869, and he being then and there by me first carefully examined, cautioned, and duly sworn on the Bible to declare the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories thereto attached, to be propounded to him and others in the before-mentioned case, made answer as follows to the several interrogatories aforesaid, to wit:

First. To interrogatory first witness answers: My name is William B. Meeker. I reside in the city of New York. I am cashier of the Bank of New York National Banking Association, whose place of business is in the city of New York.

Second. To interrogatory second witness answers: I have no knowledge of the bill of lading inquired about in second interrogatory.

Third. To interrogatory third witness answers: I have knowledge of the two bills of exchange inquired about in the third interrogatory. Said bills were sent to the Bank of New York National Banking Association, of which I am, and was when said bills were received, the cashier, by Pike, Brother & Co., bankers, of New Orleans, for collection. Said bill for five thousand dollars was received by said bank on the fifth day of April, one thousand eight hundred and sixty-nine, (April 5th, 1869,) by mail, enclosed in a letter from said Pike, Brother & Co., dated April 1st, 1869, addressed to me as cashier of said bank. Said bill for $4,000 was received by said bank on the 7th day of April, 1869, by mail, enclosed in a letter from said Pike, Brother & Co., dated April 3, '69. I decline to annex said two original letters to this deposition; they are preserved among the files of said bank. One of them relates to various other drafts, and I think it necessary for the bank to retain
198 them. I produce and annex two copies of said letters to this deposition, and marked, respectively, "Exhibits U and V." I have knowledge of the acceptance and payment of said bills. Said bills were paid to said bank by W. J. Porter & Co., of the city of New York. Said bill for $5,000 was so paid on April 5th, 1869, and said bill for $4,000 on April 7th, 1869, and the amounts credited to said Pike, Brother & Co. I do not know what was the inducement and consideration for such payment.

Fourth. To interrogatory fourth witness answers: I do not know.

Fifth. To the fifth interrogatory witness answers: Certain bills of lading of the description inquired about in the fifth interrogatory were received by said bank, with certain bills of exchange drawn upon W. J. Porter & Co., of the city of New York, sent to said bank by Pike, Brother & Co., of New Orleans, for collection. One of said bills of lading for 107 bales of cotton, dated March 18th, 1869, came with a bill of exchange for $10,700, drawn by J. C. Forbes on W. J. Porter & Co., dated the 18th March, 1869, payable at sight. Another of said bills of lading for 150 bales of cotton, dated March 16th, 1869, came with a bill of ex-

change for $15,000, drawn by John C. Forbes on W. J. Porter & Co., dated March 18th, 1869, payable at sight. Said bank received said bills of lading and bills of exchange on the 22d day of March, 1869, by mail, in a letter from said Pike, Brother & Co., dated March 18th, 1869. I annex a true copy of said letter to this deposition, marked "Exhibit W." Said bank delivered said bills of lading to said W. J. Porter & Co., in consideration of their payment of said bills of exchange, which accompanied same. Said W. J. Porter & Co. paid the amount of both said bills of exchange to said bank, at the city of New York, on the 22d day of March, 1869, and said bank then delivered said bills of lading to them.

199 Another of the bills of lading of the description inquired about, dated 27th March, 1869, for 221 bales of cotton, came with a bill of exchange for $22,100, drawn by John C. Forbes on W. J. Porter & Co., dated 27th March, 1869, payable at sight. Said bank received said last-mentioned bill of lading and bill of exchange on the 1st day of April, 1869, by mail, enclosed in a letter from said Pike, Brother & Co., dated March 27th, 1869. I annex a true copy of said letter to this deposition, marked "Exhibit H." Said bank delivered said bill of lading for 221 bales to said William J. Porter & Co. on the 1st day of April, 1869, in consideration of said W. J. Porter & Co. paying to said bank said bill of exchange for $22,100, which they did on that day. I see that there are various indorsements upon said bills of lading, but I can state nothing about them of my own knowledge. I don't know whether or not the property called for by said bills of lading was ever delivered by the master of said brig, nor the value of said property, nor who is now the holder of said bills of lading.

Sixth. To interrogatory sixth witness answers: Besides the bills of exchange I have already spoken of in answer to these interrogatories, said bank received, on the 29th day of March, 1869, from said Pike, Brother & Co., for collection, a bill of exchange for $7,500, drawn by Waddy Thompson on W. J. Porter & Co., dated 25th March, 1869, payable at sight, and with it a bill of lading, dated 24th March, 1869, purporting to be for 65 bales of cotton shipped by James Seymour on board the brig C. C. Colson; said bill of exchange and bill of lading came by mail, in a letter from said Pike, Brother & Co., dated March 25th, 1869, a true copy of which I annex to this deposition, marked "Exhibit Y." Said W. J. Porter & Co. paid the amount of said bill of exchange to said bank, on the 29th day of March, 1869, in consideration of which said bank then delivered said bill of lading to said W. J. Porter & Co.

200 There were four other bills of exchange, drawn by Waddy Thompson on W. J. Porter & Co., received by said bank from Pike, Brother & Co. for collection; one was for $1,591, dated 22d March, 1869, payable at sight, and came to said bank in a letter from said Pike, Brother & Co., March 22d, 1869, a true copy of which I annex to this deposition, marked "Exhibit Z." Said bill was received by said bank on the 26th day of March, 1869, on which day W. J. Porter & Co. paid the amount thereof to said bank. I do not know what was the consideration for the payment of said bill. Another of said bills was for $30,000, dated March 27, 1869, payable at three days' sight; it came in a letter dated March 27th, 1869, a copy of which I have already annexed to this deposition, marked "X." Said bill for $30,000 was accepted on the first day of April, 1869, and paid by said W. J. Porter & Co. to said bank, on the 7th day of April, 1869, when said bank delivered to said W. J. Porter & Co. a bill of lading for 310 bales of cotton. I have no knowledge or recollection of said bill of lading, except as to the number of bales mentioned in it. Two other

of said bills of exchange were dated April 3d, 1869, each for $10,000, one at ten days after sight and one at five days after sight. They were received by said bank on the 7th day of April, 1869, in the letter dated April 3d, 1869, a copy of which I have annexed to this deposition as Exhibit V. Both were presented and accepted on said 7th day of April, 1869, and on the 15th day of April, 1869, the said bill for $, at five days after sight, was paid by W. J. Porter & Co. to said bank. I do not know for what consideration. Said bill at ten days' sight was not paid.

Seventh. To interrogatory seventh witness answered: I have no knowledge of the makers inquired about in the seventh interrogatory, except what I have stated as to how said bill came to be accepted and paid, and the inducement and consideration thereof.

Eighth. To interrogatory eighth witness answers: I do not annex the original letters of Pike, Brother & Co. to which I have re-
201 ferred in my answer to fifth and sixth interrogatories, for the reasons I have given in my answer to the third interrogatory in relation to the letters there referred to. I was cashier of said bank of New York during the whole period of the transactions inquired about in these interrogatories. The various bills of exchange as to which I have testified, except the one dated April 3d, 1869, payable at ten days after sight for $10,000, and the bills of lading I have referred to, except the one for 310 bales of cotton, are annexed as exhibits to the deposition of W. J. Porter in this case.

(Signed) W. B. MEEKER.

Sworn to and subscribed in my presence this 11th day of Dec., A. D. 1869.

[SEAL.] (Signed) WILLIAM V. ARCHER,
Commissioner for Louisiana in New York.

Next came ELICK BEILINGER, of said city of New York, a witness on behalf of said libellants in a suit pending in the district court of the United States for the eastern district of Louisiana, at the office of Charles Nettleton, 117 Broadway, in the said city of New York, on said 11th day of December, 1869, and he being then and there first by me carefully examined, cautioned, and duly sworn on the Bible to declare the truth, the whole truth, and nothing but the truth in answer to the several interrogatories hereto attached, to be propounded to him and others in the before-mentioned case, made answer as follows to the several interrogatories aforesaid, to wit:

First. To interrogatory first witness answers: My name is Elick Bielinger. I reside in the city of New York. I am a clerk of Duncan, Sherman & Co., of said city, bankers, in their merchandise department.

Second. To interrogatory second witness answers: I have
202 knowledge of the bill of lading inquired about in the second interrogatory. I first saw it at the banking-house of Duncan, Sherman & Co., in the city of New York, on the 5th day of April, 1869, in the hands of Mr. W. J. Porter, of said city, when said W. J. Porter applied to Duncan, Sherman & Co. for an advance upon said bill of lading; said bill of lading was indorsed by W. J. Porter, in the name of W. J. Porter & Co., and delivered by said W. J. Porter to Duncan, Sherman & Co., at their banking-house, on the 5th day of April, 1869, upon his receiving from them an advance of $11,243.27 upon said bill of lading, which advance, and an additional advance of $4,000 made on April 7, 1869, was the consideration of said indorsement and delivery; said

bill of lading is not in my possession; it is annexed to the deposition of William J. Porter in this case, and has been exhibited to me upon this examination; there are several indorsements on said bill of lading; the indorsement "Deliver to order of William J. Porter & Co., John C. Forbes," was upon said bill when it was delivered by W. J. Porter to Duncan, Sherman & Co., as I have stated, and that is all I know about that indorsement; the indorsement "W. J. Porter & Co." was made by W. J. Porter at the time I have stated; the indorsement "Deliver to Baring Bro. & Co. or order," above the indorsement "W. J. Porter & Co.," is my handwriting, and was placed on said bill on the 7th day of April, 1869, when Duncan, Sherman & Co. forwarded said bill to Baring Bro. & Co. at Liverpool, England, and drew against same on Baring Bro. & Co. to re-imburse their said advance to the said W. J. Porter. William J. Porter, of the city of New York, is now the holder of said bill of lading. After said bill of lading had gone forward to Baring, Brothers & Co., and on or about the 18th day of April, 1869, Duncan, Sherman & Co. were advised that a fraud had been committed in connection with the bills of lading for cotton on the C. C. Colson, and that the cotton called for by said bills of lading was not actually shipped on board said vessel, and said Duncan, Sherman & Co. then remitted to Baring Bro. & Co. funds to cover their draft on Baring
203 Brothers & Co. against said bill of lading, which Baring Brothers & Co. then returned to Duncan, Sherman & Co., and Duncan, Sherman & Co. thereupon redelivered to the said W. J. Porter, in pursuance of an agreement made with him on or about the 18th day of April, 1869, when they relinquished to him all their lien and claim on said bill of lading.

Third. To interrogatory third witness answers: I know that the two bills of exchange inquired about in the 3d interrogatory, and which are annexed to the deposition of William J. Porter in this case, were handed over to Duncan, Sherman & Co. by W. J. Porter, on the 5th day of April, 1869, with the bill of lading mentioned in the second interrogatory and my answer thereto, and were afterwards returned by us to W. J. Porter; the only knowledge I have of the acceptance and payment of said two bills of exchange is derived from the bills themselves, and the fact that they came to us from the said W. J. Porter. I do not know what was the inducement and consideration for the acceptance and payment of said bills, unless it was the transfer to said W. J. Porter of the said bill of lading for 139 bales of cotton against which said bills of exchange purport to be drawn.

Fourth. To interrogatory fourth witness answers: I do not know whether said 139 bales of cotton have ever been delivered to the master of the brig C. C. Colson; said cotton, if of the grade of low middling, would now be worth 24½c. per pound.

Fifth. To interrogatory fifth witness answers: I have knowledge of various other bills of lading of the description inquired about in the fifth interrogatory; one bears date March 16, 1869, and is for 150 bales of cotton, and another bears date 18th March, 1869, for 107 bales of cotton; I first saw said two bills of lading at the city of New York,
204 on the 22d day of March, 1869, at the request of W. J. Porter. I that day called at the Bank of New York National Banking Association, No. 48 Wall street, New York City, and received from said bank for said Porter one of said bills of lading, upon paying to said bank for said Porter the amount of a bill of exchange drawn against said bill of lading, and to the best of my recollection I received for said Porter the other of the said bills of lading from the said bank on the same day,

upon paying a bill of exchange drawn against the same; said Bank of New York, on said 22d day of March, 1869, transferred and delivered said bill of lading for 150 bales to said W. J. Porter upon his payment of a bill of exchange for $15,000, dated 18th March, 1869, drawn by John C. Forbes on Messrs. W. J. Porter & Co., and on the same day transferred and delivered to said Porter said bill of lading for 107 bales upon his paying a bill of exchange dated 18th March, 1869, for $10,700, drawn by John C. Forbes on W. J. Porter & Co., and purporting to be against said 107 bales cotton; on or about said 22d day of March, 1869, said W. J. Porter indorsed both said bills of lading in the name of W. J. Porter & Co., and delivered same to Duncan, Sherman & Co., upon his receiving from them on that day an advance of $25,700 upon said bills of lading, which advance was the consideration of said indorsement and delivery; another of said bills of lading is one dated March 20th, 1869, for 9 bales; this I first saw on the 28th day of March, 1869, at the banking-house of Duncan, Sherman & Co., in the hands of William J. Porter, who on that day indorsed said bill of lading, and delivered the same to Duncan, Sherman & Co., upon receiving from them an advance of $2,739.08 upon said bill of lading for 9 bales, and the former bills of lading, one for 107 bales, and one for 150 bales, which advance was the consideration for said indorsement and delivery; another of said bills of lading is dated 27th March, 1869, for 221 bales; I first saw it at the banking-house of Duncan, Sherman & Co. on the 1st day of April, 1869, in the hands of William J. Porter, who, on or about that day, indorsed said bill of lading, and delivered the same to Duncan,
205 Sherman & Co., upon receiving from them an advance of $22,100 upon said bill of lading, which advance and an additional advance of $963.83 made in April 5th, 1869, was the consideration for said indorsement and delivery; another of said bills of lading is dated April 8th, 1869, for one bale. This I first saw at said banking-house on or about the 13th day of April, 1869, in the hands of said W. J. Porter, who then indorsed and delivered the same to Duncan, Sherman & Co., this bill of lading being intended to cover a bale which should have been included in the bill of lading for 139 bales which I have mentioned, and the consideration for said delivery was the advances already made by said Duncan, Sherman & Co. upon said 139 bales. Said bill of lading mentioned in this answer are not in my possession. They are annexed to the deposition of William J. Porter in this case, and have been exhibited to me upon this examination. There are several indorsements upon said bills of lading. The indorsements "Deliver to W. J. Porter & Co.," and "J. C. Forbes" and "John C. Forbes," were upon said bills of lading when they were delivered by W. J. Porter to Duncan, Sherman & Co., as I have stated. Each of said bills were then indorsed "J. C. Forbes" or "Jno. C. Forbes." One of said bills for each shipment is indorsed "W. J. Porter & Co.," which was done by W. J. Porter at the several times I have already stated. One of said bills for each shipment is also indorsed "Deliver to Messrs. Baring, Brothers & Co. or order," or "Deliver to Baring, Brothers & Co. or order." These indorsements are my handwriting, and were placed on said bills soon after we received same from W. J. Porter, and upon the occasion of Duncan, Sherman & Co. forwarding said bills to Baring, Brothers & Co., at Liverpool, and drawing on them against same to cover their said advances to W. J. Porter. I do not know whether the property called for by said bills of lading was ever delivered by the master of said brig. Said cotton, if of the grade of low middling, would now be of the value of 24½c. per pound. The said William J. Porter is now the holder of said bills of lading. Af-

206 ter said bills of lading had gone forward to Baring, Brothers & Co., and on or about the 18th day of April, 1869, Duncan, Sherman & Co. were advised of certain matters in relation to bills of lading, purporting to be for shipments of cotton by the brig C. C. Colson, as I have stated in my answer to the second interrogatory, and said Duncan, Sherman & Co. then remitted to Baring, Bros. & Co. funds to cover their drafts on Baring, Bros. & Co. against said bills of lading, which Baring, Bros. & Co. then retuned to Duncan, Sherman & Co., who thereupon redelivered said bills of lading to W. J. Porter, in pursuance of an agreement made by them with him on or about the 18th day of April, 1869, when they relinquished to him all their lien and claim upon said bills of lading.

Sixth. To sixth interrogatory witness answers: I have mentioned two bills of exchange of the description inquired about in my answer to the fifth interrogatory, one for $15,000 and one for $10,700. Said bills were handed over to Duncan, Sherman & Co. by W. J. Porter with the two bills of lading against which they were drawn, and were afterwards returned by Duncan, Sherman & Co. to said W. J. Porter. I have stated everything else I know relative to said two bills in my answer to the fifth interrogatory. Said Porter also handed to Duncan, Sherman & Co. with the bill of lading for nine bales mentioned in said answer to fifth interrogatory a draft of J. C. Forbes on W. J. Porter & Co., dated March 22d, 1869, for $1,591, and with the bill of lading for 221 bales mentioned in said answer a draft for $22,100, dated 27th March, 1869, drawn by John C. Forbes on W. J. Porter & Co.; a draft dated 30th March, 1869, for $963.83, drawn by Waddy Thompson on W. J. Porter & Co., was also handed to us by the said Porter on or about the 4th day of April, 1869, and on or about the 15th day of April, 1869, a draft of Waddy Thompson on W. J. Porter & Co., dated April 3d, 1869, at five days for $10,000. All said bills of exchange were afterwards returned by Duncan, Sherman & Co. to said W. J. Porter. They are

207 all attached to the deposition of W. J. Porter in this case, and have been exhibited to me upon this examination. I have no knowledge as to the acceptance and payment of said bills except from what appears on the face of them, and from the fact that we received them from W. J. Porter. I do not know the inducement and consideration for such payment. There is also a bill of exchange for $7,500, dated 25th March, 1869, payable at sight, drawn by Waddy Thompson on W. J. Porter & Co., purporting to be drawn against a shipment of 65 bales of cotton per brig C. C. Colson. This bill of exchange was handed to Duncan, Sherman & Co. by said W. J. Porter, with a bill of lading, dated the 24th day of March, 1869, purporting to be for 65 bales of cotton shipped by James Seymour on board the brig C. C. Colson on the 8th day of April, 1869, when Duncan, Sherman & Co. advanced to said Porter $7,201 upon said bill of lading; said bill of exchange and bill of lading are both annexed to the deposition of W. J. Porter in this case. The indorsement "James Seymour" was on said bill of lading when delivered by said Porter to Duncan, Sherman & Co., as I have stated. The indorsement "Deliver to Messrs. Baring, Bros. & Co. or order" is in my handwriting, and was placed on said bill soon after we received same, and upon the occasion of our forwarding said bill of lading to Baring, Bros. & Co., and drawing on them against same; Duncan, Sherman & Co. afterwards remitted to Baring, Bros. & Co. funds to cover their drafts against said bill of lading, which Baring, Bros. & Co. returned to Duncan, Sherman & Co., who redelivered same to said W. J. Porter, and also returned to him

said bill of exchange, in pursuance of their agreement, made with him on or about the 18th day of April, 1869, when they gave up to him all their lien and claim on said bill of lading. I have no personal knowledge of the payment of this bill of exchange or of the consideration therefor. There is also a bill of exchange drawn by Waddy Thompson on W. J. Porter & Co., dated 25th March, 1869, for $20,000, payable five days after sight. Duncan, Sherman & Co. received this draft on the 29th day of March, 1869, for collection, from Wheless & Pratt,
208 of New Orleans, bankers, indorsed by them to Andrew Reid or order, which Andrew Reid was and still is a clerk of said Duncan, Sherman & Co.; it was accepted by W. J. Porter on 29th March, 1869, and paid by him to us on the 6th day of April, 1869. The indorsement "Andrew Reid" on said bill of exchange is the genuine indorsement of said Andrew Reid, clerk of Duncan, Sherman & Co. I first saw said bill on the day of its receipt by us from Wheless & Pratt. I do not know what was the consideration of its payment. It is annexed to the deposition of W. J. Porter in this case, marked "Exhibit R." There is also a bill of exchange drawn by Waddy Thompson on W. J. Porter & Co., dated 8th April, 1869, for $6,900, which is annexed to the deposition of W. J. Porter in this case, and marked "Exhibit A A." Duncan, Sherman & Co. received this draft for collection from Wheless & Pratt, of New Orleans, on the 12th day of April, 1869, on which day we charged W. J. Porter with the amount thereof, and gave said draft to him, and credited Wheless & Pratt, who has an account with us, with the amount thereof as collected. That is all I know about said bill.

Seventh. To interrogatory seventh witness answers: I have no knowledge of the matters inquired about in the seventh interrogatory, except what I have already stated, as to how certain of said bills of exchange came to be paid and the consideration thereof.

Eighth. To interrogatory eighth witness answers: I was a clerk of Duncan, Sherman & Co. during the whole period of the transactions inquired about in these interrogatories. I think of nothing else of importance in connection with this matter.

(Signed) E. BEILINGER.

Sworn to and subscribed in my presence this 11th day of Dec., A. D. 1869.

[SEAL.] (Signed) WILLIAM V. ARCHER,
Commissioner of Louisiana in New York.

209 STATE OF NEW YORK,
City and County of New York, ss:

I, William V. Archer, a commissioner of the State of Louisiana in and for the city and State of New York, duly appointed and commissioned by the governor of the said State of Louisiana, duly sworn and authorized under and by virtue of the laws of the State of Louisiana to take depositions and affidavits to be used and read in evidence in the courts of that State, do certify that William J. Porter, William B. Meeker, and Elick Beilinger, witnesses, prior to the taking of the foregoing depositions, were first by me respectively duly cautioned, examined, and sworn on the Bible to testify the truth, the whole truth, and nothing but the truth in answer to the several interrogatories to be propounded to them in a cause pending in the district court of the United States district court for the eastern district of Louisiana, holding session at New Orleans, wherein W. J. Porter & Co. are the plaintiffs and the brig C. C. Colson and owners are the defendants; and I do further

certify that the said depositions were taken at the office of Charles Nettleton, 117 Broadway, in the city of New York, on the 11th day of December, 1869, in pursuance of interrogatories and commission hereto annexed, said commission bearing date September 11, 1869; that the same was written down by me in the presence of the said witnesses, respectively, and by them signed in my presence, after the same had been by me first carefully read over to them, each by himself, as aforesaid; that I am not counsel or attorney to either of the parties in the before-mentioned suit, or otherwise interested in the result of the said suit, and said depositions were taken at the time and place mentioned in the caption hereof.

In witness whereof I have hereto set my hand and affixed my seal of office this eleventh day of December, A. D. 1869.

[SEAL.] (Signed) WILLIAM V. ARCHER,
Commissioner of Louisiana in New York.

210 Commissioner fees, $100, paid by plaintiffs.

W. V. ARCHER,
Commissioner.

Testimony of C. A. Janvier and Robert R. N. Keaghey.

W. J. PORTER & CO.
vs.
BRIG C. C. COLSON.

Testimony for libellants, taken before Chas. Clarborne, U. S. commissioner, June 2, 1869.

Present, A. C. Miller, for libellants.

Absent, Simmes & Mott, Hunt & Denegre, Rogers & Blane, and B. H. Morgan, although duly notified.

C. A. JANVIER, being duly sworn, says:

I was in the employ of Waddy Thompson in April and March last as book-keeper.

Being shown the two bills of exchange now marked "A" and "B," says:

They were drawn by John C. Forbes and by him indorsed; they were also indorsed by Waddy Thompson, by me, as his attorney in fact, and I had power from him to so indorse them. They were filled by me, and I have knowledge of their execution and of the circumstances of it. These bills of exchange were drawn against the shipment of 139 bales of cotton, as I understood, per brig C. C. Colson; the signatures to the bills are all genuine. I know that Waddy Thompson purchased 140 bales of cotton, which were marked the same as the cotton described in the second bill of lading filed; at least, it has been represented
211 to me that they were marked and shipped in Mr. Forbes' name.

I know that the cotton was purchased and paid for by Waddy Thompson. The two bills of lading that I refer to is one for 139 and one for one bale cotton, dated April 8th, '69.

Being shown all the bills lading referred to in the deposition of J. A. Pratt, says:

All these bills passed through my hands, and I know they were executed at the dates of their signature, or about.

Being shown bills of exchange marked C, D, E, F, and G, says:

They were all drawn by me, as the attorney in fact of Waddy Thomp-

son, and indorsed by me as such, and I had power to so indorse them. Bills C and G were drawn against the shipments stated in them. Bills of exchange now marked H, I, and J, were drawn against the shipments stated in them, as I understood. The draft for $15,000, now marked K, I know must have been drawn in anticipation of a shipment of cotton. About the middle of March John C. Forbes commenced shipping cotton on the brig Colson, and Waddy Thompson was to advance him about three-fourths of the value of the cotton shipped, and that is what Waddy Thompson advanced on the shipment. That is my understanding about the extent of the advance. The bills of lading were taken by Forbes, that is, for the cotton shipped by the Colson. Thompson was to re-imburse himself by the negotiation of Forbes' bills of exchange, accompanied by bills of lading. The usage was for Forbes to draw his bill of exchange for about $100 per bale cotton, giving Thompson an order for the balance of the proceeds, and then if upon making up an invoice there was still an amount to draw for within three-fourths of invoice value, Thompson would then draw his own bill for such balance. It was in this mode that the business was transacted and the bills of exchange in evidence drawn. It is my impression that the 140
212 bales cotton I speak of came from the Shippers' Press—that is, they were stored there for shipment. The value of cotton at the time spoken of, in March and April, 1869, was about $125 a bale here in this ity. The two bills of exchange negotiated through Pike, Lapeyre & Brother were drawn, the one for $4,000 on 3d April, 1869, and the one for $5,000 on 1st April, 1869. The value of the 140 bales of cotton referred to above was $17,379.33, and were purchased from H. W. Farley & Co.

(Signed) CHAS. A. JANVIER.

Sworn to and subscribed before me June 2, '69.

(Signed) CHAS. CLARBORNE,
U. S. Commissioner.

ROBERT R. N. KEAGHEY, being sworn, says:

Was the shipping-clerk at the Shippers' Press in April and May, 1869. I have knowledge of 140 bales of cotton stored in that press in April last of the marks corresponding with the receipts now filed, and marked respectively 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. I sent this cotton on the 8th day of April, 1869, to the brig C. C. Colson under the direction of Waddy Thompson—that is, by the order of Waddy Thompson given to the press. I saw the cotton put on the drays and superintended the same. The cotton was hauled by the draymen of the press and delivered to Roby and Keenan on the brig. The receipts numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are the receipts signed for that cotton. The receipts show the number of bales and their respective marks. They are the genuine receipts and come from the files of the press.

(Signed) ROBERT R. N. KEAGHEY.

Sworn to and subscribed before me June 2d, 1860.

(Signed) CHAS. CLARBORNE,
U. S. Commissioner.

213 JANUARY 4, 1870.

Mr. JANVIER recalled, says:

The indorsements on the bills of exchange on file are all genuine, I mean the indorsements of Waddy Thompson and John C. Forbes, ex-

cept one for $6,900 marked as copy; the bills were all drawn by Waddy Thompson and J. C. Forbes. I was the attorney in fact of Waddy Thompson, and drew the bills by his directions.

(Signed) CHAS. A. JANVIER.

Sworn to and subscribed before me, this 4th day of January, 1870.

(Signed) K. LOEW,
U. S. Commissioner.

Deposition of F. M. Roby.

W. J. PORTER & Co.
vs.
BRIG C. C. COLSON.

Testimony of libellants, taken before K. Loew, U. S. commissioner, June 8th, 1869.

Present, H. C. Miller for libellants.

Other proctors absent, although duly notified.

F. M. ROBY, duly sworn, says:

I was mate of the brig Colson in April, 1869, having been employed by Julius A. Pratt, who was then her captain. I recollect that 140 bales cotton from the Shippers' Press had been received by me as mate of brig C. C. Colson. It may be that some loads were delivered to the 2d mate, but I think not.

214 Being shown dray-receipts, marked 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, states:

They were all signed by me as mate of the vessel, except one for 14 bales of cotton, which is signed by Keenan, the second mate, and are for the 140 bales of cotton received on the wharf for the vessel. At the time that these bales was received I was receiving cargo for the vessel. The 140 bales of cotton were delivered at the wharf at which the Colson was lying. They were delivered into my charge at that wharf. They remained on the wharf four or five hours. They were not placed on the vessel. The reason why they were not taken on board the vessel was Mr. J. C. Forbes ordered them off. I know they were taken away from the wharf by him. The reason he assigned was that he was going to send them away by steamer. I am positive that no part of the 140 bales of cotton was included in the cotton on board the vessel when she was seized by the marshal, as they were carried off. Mr. Forbes had charge of the vessel, as he was there every day; otherwise I would not have permitted him to take away the cargo, and besides I knew he was the shipper. I did not know at that time that a bill of lading had been signed for 140 bales; had nothing to do with that part. I gave the captain the blank receipts for these 140 bales, which were left in my possession when I signed the receipts. I signed no bills of lading; the captain signed them himself. Neither Page nor Waddy Thompson ever exercised any control in respect to the vessel whilst I was on board. There was another mate on the vessel before me. Some of the cargo was on the vessel when I came there. The only cargo received after the 140 bales of cotton were carried away was some moss. I am not certain; there may be a few bales of cotton. I was mate of the vessel from the 25th day of March till the voyage was broken up by the seizure of the vessel by the custom-house officers, and afterwards by the marshal. The voyage of the brig for which I shipped was never performed.

(Signed) F. M. ROBY.

215 Sworn to and subscribed before me June 8th, 1869.
(Signed) R. LOEW,
U. S. Commissioner.

Deposition of H. W. Farley, Geo. Baker, and Wm. S. Pike, Doct. C.

W. J. PORTER & Co.
vs.
BRIG C. C. COLSON.

Testimony for libellants, taken before K. Loew, commissioner, June 9, 1869.
Present, H. C. Miller, for libellants.
Other proctors absent, though notified.

W. A. FARLEY, sworn, says:

Am a member of the firm of H. W. Farley & Co., cotton-factors, in this city. On the 5th day of April, 1869, my firm sold to Waddy Thompson 140 bales of cotton, through A. E. Bignon, broker. The total price of that cotton was $17,377.33, which was its full market-value at the time. These 140 bales of cotton were at the Shippers' Press, stored there for my firm's account. Am familiar with the market-value of cotton at that time, as well as in March, '68. In the months of March and April, 1869, ordinary to low middling was worth from 25 to 27 cents a pound; from low middling to the higher grade it was worth from about 27 to about 28 or 28½ cents a pound. The classification of cotton runs from ordinary to good middling. A bale of cotton weighs from four to five hundred pounds.
(Signed) H. W. FARLEY.

216 Sworn to and subscribed before me June 9th, 1869.
(Signed) K. LOEW,
U. S. Commissioner.

GEO. BAKER, sworn, says:

John C. Forbes employed me as captain of the brig C. C. Colson. Both Forbes and Waddy Thompson wished me to take the ownership of the vessel at the time that I was master. Forbes principally exercised acts of ownership of the vessel. Whilst I was captain I conferred with Forbes in relation to the destination of the vessel and employment of same; never with Page. It was after I was applied to to take the ownership of the vessel that she was put in the name of F. H. Page. The vessel was bought by Pool, as agent for Forbes, and Thompson paid the money. Thompson, while I was captain, made application to me to sign bills of lading for cotton not on board, which I declined. The last application of this kind made by Thompson and declined by me resulted in Captain Pratt taking my place as captain of the vessel. At the time that these applications were made by Thompson and declined by me Forbes (John C.) was standing near by, and remarked to me when I declined, "Now you have spoiled everything." Shortly after my declining I left Thompson with Forbes and encountered Pratt. Forbes said, "There is Pratt; perhaps he will do as master." I said I would send him to him, and sent Pratt to Forbes. After that Pratt was employed as master of the brig. I think it was the 20th or 21st of March, '69. I never signed any bill of lading for the vessel.
(Signed) GEORGE BAKER.

Sworn to and subscribed before me June 9, 1869.
(Signed) K. LOEW,
U. S. Commissioner.

217 WM. S. PIKE, being duly sworn, says:

Have examined the bills of exchange marked A, B, C, D, E, H, I, J, & K, filed with testimony of Chas. A. Janvier, June 2d, 1869. They were all negotiated to my firm by Waddy Thompson, at or about their respective dates. Mr. Thompson received the proceeds thereof. After their negotiation said bills of exchange were forwarded to New York for payment. They were all indorsed by the firm of Pike, Brother & Co., of which I am a member. They were indorsed for collection in New York, to the order of W. B. Meeker, cashier, Bank of New York. The bills of exchange were generally accompanied by bills of lading; but have no recollection of the bills of lading now shown to me, as we keep no record of bills of lading. If I received bills of lading I forwarded them with the bill of exchange.

(Signed) W. S. PIKE.

Sworn to and subscribed before me June 29th, 1869.
(Signed) K. LOEW,
United States Commissioner.

Testimony of J. A. Pratt.—E.

W. J. PORTER & Co.
vs.
BRIG C. C. COLSON.

Testimony for libellants, taken before K. Loew, U. S. commissioner, May 21st, 1869.

Present, Henry C. Miller for libellants.

218 W. O. Denegre, on behalf of Wm. H. Hunt, for W. S. Pike, Thomas J. Semmes for Schaefer & Co., libellants in suit No. 9407, and J. Pratt, master of brig libelled.

Absent, P. H. Morgan, United States attorney.

J. A. PRATT sworn:

Being shown bill of lading filed with libel, says he signed it; was at that time master of the brig C. C. Colson; the voyage for which that bill of lading was signed was never performed, and the property mentioned in said bill of lading never delivered, the voyage of the vessel having been broken up by the seizure of the United States marshal.

Witness being shown bills of lading marked A, B, C, D, E, F, G, H, & I, says he signed all of them, and was at the time the master of the brig Colson; none of the property mentioned in said bills of lading was ever delivered; the voyage for which these bills were signed was never performed, the vessel being seized by the United States marshal; was captain of the vessel at the time of the seizure, and am still. My orders came from Mr. Page, through Forbes for Page, as owner. Mr. Roby was mate whilst I was captain. There were two other mates before Mr. Roby came on board.

On claim of Schaefer & Co., libellants in suit No. 9407.

Being shown bill of lading marked K, witness says, I have signed it. Duplicate and triplicate of said bill of lading being exhibited by proctor for Schaefer & Co., witness says he signed them.

The duplicate and triplicate bill of lading are retained by the proctor for Schaefer & Co.

219 Bill of lading marked K was signed on the day it bears date. I was master of the brig C. C. Colson at that time. The voyage of the vessel was broken up by her seizure by the marshal, and the property mentioned in said bill of lading was never delivered. Bills of lading of W. J. Porter & Co. were also signed in duplicate and triplicate.

(Signed) JULIUS A. PRATT.

Sworn to and subscribed before me this 21st May, 1869.

(Signed) K. LOEW,
United States Commissioner.

District court of the United States, district of Louisiana.

I certify that the foregoing is a true copy of all the originals referred to in the report of M. M. Cohen, esq., United States commissioner, filed in this court, with the exception of the bills of lading, bills of exchange, note of page, which have been withdrawn from the record by leave of court.

Witness my hand and seal of our court, at New Orleans, this 22d Aug., 1870.

[SEAL.] CHAS. CLARBORNE,
Clerk,

Per K. LOEW,
Deputy Clerk.

EXHIBIT Z.

Nine bills of lading referred to by Clarborne, including Exhibits B & C, and the following:

EXHIBIT Z.

New Orleans commission. (Referred to by Clarborne.)

220 In Porter v. Colson, No. 9410, marked by Archer, commissioner, F, filed with testimony of Pratt, May 21, 1869, marked E.

In Porter v. Herron, No. 5, 5849, filed April 30th, 1869.

Bill of lading for 107 bales of cotton, shipped on the Colson by J. C. Forbes, marked C V, weighing 49,960 lbs., dated 18 March, 1869, signed by Julius A. Pratt.

(Indorsed:) Jno. C. Forbes, W. J. Porter & Co.

EXHIBIT Z.

New Orleans commission. (Referred to by Clarborne.)

In Porter v. Colson, No. 9410, marked by Archer, commissioner, U, and filed with testimony of Pratt, May 21, 1869, marked B.

In Porter v. Herron, No. 8, 5849, filed April 30th, 1869.

Bill of lading for 141 bales of cotton, shipped on the Colson by J. C. Forbes, marked J C F, weighing 64,860 lbs., dated April 12, 1869, signed by Julius A. Pratt.

(Indorsed:) Deliver to order of W. J. Porter & Co. Jno. C. Forbes, W. J. Porter & Co.

EXHIBIT Z.

New Orleans commission. (Referred to by Clarborne.)
In Porter v. Colson, No. 9410, marked by Archer, commissioner, K, filed with testimony of Pratt, May 21, 1869, marked G.
221 In Porter v. Herron, No. 3, 5849, filed 30th April, 1869.
Bill of lading for 221 bales of cotton, shipped on the Colson by J. C. Forbes, marked—

Z	47,	weighing	20,142 lbs.
W	136	"	63,595 "
T	32	"	15,965 "
S	6	"	2,870 "
	221		102,572

Dated 27th March, 1869, signed by Julius A. Pratt.
(Indorsed:) Jno. C. Forbes, W. J. Porter & Co.

New Orleans commission. (Referred to by Clarborne.)
In Porter v. Colson, No. 9410, marked by Archer, commissioner, I, and filed with testimony of Pratt, May 21, 1869.
In Porter v. Herron, No. 4, 5849, filed April 30th, 1869.
Bill of lading for nine bales of cotton, shipped on the Colson by J. C. Forbes, marked D D, 4; K K, 5, weighing 4,338 lbs., dated March 20th, 1869, signed by Julius A. Pratt.
(Indorsed:) Deliver to W. J. Porter & Co. J. C. Forbes, W. J. Porter & Co.

EXHIBIT Z.

New Orleans commission. (Referred to by Clarborne.)
222 In Porter v. Colson, No. 9410, marked by Archer, commissioner, Q, and filed with testimony of Pratt, May 21st, 1869, marked A.
Bill of lading for sixty-five bales of cotton, shipped on the Colson, by J. C. Forbes, marked—

30 bales	J S,	weighing	14,784 lbs.
15 "	S	"	7,650 "
13 "	P P	"	6,799 "
7 "	J S	"	3,360 "
65			32,593

Dated 24th March, 1869, and signed by Julius A. Pratt.
(Indorsed:) Deliver to Messrs. Baring Bro. & Co., or order. James Seymour.

EXHIBIT Z.

New Orleans commission. (Referred to by Clarborne.)
In Porter v. Colson, No. 9410, filed by Schaefer & Co., with testimony of Pratt, May 21st, 1869, and marked K.
Bill of lading for 121 bales of cotton, shipped on the Colson by J. C. Forbes, marked C, weighing 52,124 lbs., dated March 24th, 1869, signed by Pratt.
(Indorsed:) Jno. C. Forbes, Adolphus Schaefer & Co.

EXHIBIT Z.

New Orleans commission. (Referred to by Clarborne.)

223 In Porter v. Colson, No. 9410, marked by Archer, commissioner, E, and filed with testimony of Pratt, May, 21st, 1869, & marked C. In Porter v. Herron, No. 7, 5849, filed April 30, 1869.

Bill of lading for 150 bales, shipped on the Colson by J. C. Forbes, marked—

A	J		3 bales.
B	C		59
D	E		12
E	O		19
X	I	X	40
B	W	D	2
F	R	S	13
P	I	N	2

150 bales cotton, weighing 71,173 lbs., dated March 16th, 1869, signed by Julius A. Pratt.

(Indorsed:) Jno. C Forbes. W. J. Porter & Co.

Claimants then read the following depositions taken under a commission at Liverpool, England:

Deposition of Patrick McAdam.

First interrogatory. Q. What is your name, age, residence, and occupation, and what was your occupation in the months of May and June, 1869?

A. Patrick McAdam, Liverpool; foreman warehouseman to Baring, Brothers & Co.; aged thirty-two; I was the same in the months of May and June, 1869.

Second interrogatory. Q. Did you, on or about the 20th day of May, 1869, make an examination of a lot of cotton, consisting of 165 bales, landed at Liverpool, England, from the steamship Idaho from New

224 York? If yes, state when the examination was made, at whose request, and where it was made, and what was the nature and extent of that examination.

A. Yes; I made an examination of the cotton mentioned; I am unable to state the exact date. To the best of my belief it was about the 2d July, 1869. It was made at the request of Baring, Brothers & Co.; it was made in Baring, Brothers & Co.'s warehouse in Neptune street in Liverpool. We examined them thoroughly; cut the outside canvas off wherever it was double, and made careful search for the old numbers, and any letters there might be on the bales.

Third interrogatory. Q. In whose possession was the cotton so examined at the time of its examination, and when and where did you first see the cotton; and what do you know, if anything, as to its arrival in England, and in whose possession, and where it had been from the time of its arrival till the time of your examination of it?

A. It was in the possession of Baring, Brothers & Co. I saw it first on the 21st of May, 1869, in Baring Brothers & Co.'s warehouse before mentioned, when I received it into the warehouse from the carts which brought it from the ship Idaho. I know nothing of it until I received it, as I have stated. From that time until I examined it, it was in Baring, Brothers & Co.'s warehouse before mentioned, and in their possession.

Fourth interrogatory. Q. Did you or not make a search for and ascertain all the marks and figures on the said bales of cotton? Did you also take any notice, and, if so, what, of the condition of the covering of said bales?

A. I did make search for all the marks and figures, and ascertained them as far as they could be made out; yes, I did; there was a deal of extra canvas on them forming a *a* double covering.

225 Fifth interrogatory. Q. Please state fully and in detail all the marks and figures on each of said bales of cotton, and also the condition of the covering of each bale, and whether or not the covering had been in part cut away and repaired; and generally all that you observed as to its condition.

A. I produce and annex, marked A, a full and detailed account of the marks and figures on the bales, and the condition of the covering and where cut away. The covering had been repaired where cut away by pieces of extra canvas; the new numbers given in the paper marked A were put on by ourselves.

Tenth interrogatory. Q. Do you know any other matter or thing that may tend to the advantage of the claimants in this suit? If yes, declare the same fully, as if thereunto specially interrogated.

A. I do not know of any other matter or thing that may tend to the advantage of the claimants in this suit.

First cross-interrogatory. Q. If, in answer to the first direct interrogatory, you shall state your occupation, give the names of the parties by whom you were employed in such occupation, and at the several times mentioned.

A. I have only been employed by Baring, Brothers & Co. during the period mentioned.

Second cross-interrogatory. Q. If, in answer to the second direct interrogatory, you state you made an examination of 165 bales of cotton landed at Liverpool, from the steamship Idaho from New York, state if you saw each bale of cotton as it was delivered from the ship; if you kept an account or memorandum of each bale as landed from the vessel and the number of bales; and, if so, produce said memorandum or

226 account so taken. From your examination, state whether or not said cotton was compressed. How many bales were compressed, and the marks thereof. How many bales not compressed, and the marks thereon. How covered, with gunny-cloth or hemp-bagging. How many had gunny-cloth covering and how many hemp-bagging. What were the bands around the cotton, rope or iron, and were there the full complement of bands on each bale of cotton; if you shall state both rope and iron, how many of each. Were there any marks upon said cotton? If so, state the position, character, and color of the same on each and every bale thereof, and whether the same were made with a stencil or brush.

A. I saw nothing of them until I received them from the cart into the warehouse; I then saw each bale as it was taken from the cart; I took a memorandum of the total number of each mark, say ninty-nine bales S A L and sixty-nine bales V O X, but I did not take a complete memorandum of each bale. Only part was compressed; I don't know how many. I don't know. Principally with gunny-cloth. I don't remember any hemp-bagging. I am unable to say some bales had rope bands and some bales iron bands. I don't remember any with both. I am unable to state. I am unable to state how many of each. Yes, there were marks on said cotton; the marks were on the bilge and

end of each bale. The character is stated in the annexed list marked A. with my answer to the fifth interrogatory-in-chief. The color was black. Some of the marks were made with a stencil and some with a brush. The shipping-marks S A L and V O X were made with a brush, but some of the planter's or gin marks were made with a stencil.

Third cross-interrogatory. Q. If, in answer to the third direct interrogatory, you say the cotton was other than on the wharf where the Idaho discharged it, and that you saw it discharged, do you know of your own personal knowledge that the cotton was ever discharged from the
227 Idaho? If you saw it any other place than as it was discharged from the Idaho, did you follow each bale to such place and put any private mark on it, so you could distinguish it from any other cotton bearing same shipping-mark? Did you see the cotton discharged from the Idaho, follow each bale to where the cotton was stored, and remain where it was stored until you made the examination? State exactly what you did with regard to the bales of cotton inquired of.

A. I did not see the cotton discharged from the Idaho; I did not see it until it came to the warehouse; it remained in the warehouse until I examined it; I examined in the manner I have already stated.

Fourth cross-interrogatory. Q. If, in answer to the fourth direct interrogatory, you say that you made a search for and ascertained all the marks and figures on the bales, state whether you took the weights of each separate bale. If so, produce them. If not, why did you not? Were the marks and weights marked on each bale with the same kind of marking and ink? Can one mark be more easily effaced than another; and, if so, how is it?

A. I did not take the weights of any; the weights were not taken until the bales were sold, and it was not my duty to take them. I did not notice whether the weights were marked on the bales; they were all marked with the same kind of black ink, but the marks differed as to brush and stencil as before stated; I don't know whether it can or not.

Fifth cross-interrogatory. Q. You are asked to state the condition of the covering of each bale, and whether or not the covering had been in part cut away and repaired. Now if you state the condition of the covering of each bale, can you swear that such was the condition of the bales immediately on landing from the Idaho? Were you there, and did you make a memorandum of the condition of each bale? Will
228 you testify, of your own knowledge, no repairs were made to the cotton baleing after it was discharged from the tackles of the Idaho? Will you swear that these bales of cotton had not been cut to sample, and then bagging sewed over the sample-holes, before you saw them? You are asked to state fully and in detail all the figures and marks on each of said bales of cotton. Now was there other cotton on the Idaho of the same marks? If you answer yea, did you examine them; and, if not, why not? What directions had you, or what knowledge, if any, had you to enable you to select the bales you examined from other bales on board the Idaho? State fully these directions, if any, or where you acquired your information.

A. I have already said I did not see it discharged; I could not swear as to their condition on landing, but from the appearance of the covering when brought to the warehouse it could not, in my judgment, have been repaired in Liverpool; I am unable to say whether they had or not, as I did not see them until I received them at the warehouse; I don't know; I did not see the 165 bales until I received them at the warehouse.

Tenth cross-interrogatory. Q. Do you know any other matter or thing which might be of benefit to the libellants in this cause? If so, please declare the same fully and at length, as though specially interrogated thereto.

A. I do not know of any other matter which might be of benefit to libellants.

P. McADAM.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, at Liverpool, this 25th day of November, 1870, before me,

S. H. WILDING,
Commissioner.

229 *Deposition of George Dearden.*

First interrogatory. Q. What is your name, age, residence, and occupation, and what was your occupation in the months of May and June, 1869?

A. My name is George Dearden; twenty-seven years; I reside at Liverpool; am of no occupation at present. In May and June, 1869, I was freight-clerk in the employ of Messrs. Baring Brother & Co.

Second interrogatory. Q. Did you, on or about the 20th day of May, 1869, make an examination of a lot of cotton, consisting of 165 bales, landed at Liverpool, England, from the steamship Idaho, from New York? If yes, state when the examination was made, at whose request, and where it was made, and what was the nature and extent of that examination.

A. I did examine 165 bales cotton from the steamer Idaho, about the time mentioned, but I cannot recollect the precise date, at the request of Messrs. Baring Brothers & Co., in their warehouse. We—that is, McAdam and I—went over each bale carefully, and took all the particulars to be found on the bales, both marks and numbers, and the cuttings and repairs of the coverings.

Third interrogatory. Q. In whose possession was the cotton so examined at the time of its examination, and when and where did you first see the cotton, and what do you know, if anything, as to its arrival in England; and in whose possession and where it had been from the time of its arrival till the time of your examination of it?

A. In possession of Baring Brothers & Co. I first saw it in Baring Brothers & Co.'s warehouse in Neptune street, in Liverpool. I know nothing of its arrival in England; I did not see it until after it was stored in the warehouse. I am ignorant of the further matters inquired of.

230 Fourth interrogatory. Q. Did you or not make a search for and ascertain all the marks and figures on the said bales of cotton? Did you also take any notice, and, if so, what, of the condition of the covering of said bales?

A. Yes; I did make careful search for all the marks and figures, and ascertained all that could be made out; yes, I did. I noticed that some of the coverings had been cut and repaired, and some had extra covering on.

Fifth interrogatory. Q. Please state fully and in detail all the marks and figures on each of said bales of cotton, and also the condition of the covering of each bale, and whether or not the covering had been in part cut away and repaired, and, generally, all that you observed as to its condition.

A. I have examined the paper-writing marked A, produced by Mc-

Adam, and depose that it contains all the particulars asked for by this interrogatory.

Tenth interrogatory. Q. Do you know any other matter or thing that may tend to the advantage of the claimants in this suit? If yes, declare the same fully, as if thereunto specially interrogated.

A. I do not know of any other matter or thing that might tend to the advantage of the claimants.

First cross-interrogatory. Q. If in answer to the first direct interrogatory you shall state your occupation, give the names of the parties by whom you were employed in such occupation and at the several times mentioned.

A. I was only employed by Messrs. Baring Brothers & Co. at the several times mentioned.

Second cross-interrogatory. Q. If in answer to the second direct interrogatory you shall state you made an examination of 165 bales of
231 cotton, landed at Liverpool from the steamship Idaho, from New York, state if you saw each bale of cotton as it was delivered from the ship; if you kept an account or memorandum of each bale as landed from the vessel, and the number of bales, and, if so, produce said memorandum or account so taken. From your examination state whether or not said cotton was compressed. How many bales were compressed, and the marks thereof; how many bales not compressed, and the marks thereon? How covered, with gunny-cloth or hemp-bagging? How many bales had gunny-cloth covering and how many hemp-bagging? What were the bands around the cotton, rope or iron, and were there the full complement of bands on each bale of cotton? If you shall state both rope and iron, how many of each? Were there any marks upon said cotton? If so, state the position, character, and color of the same on each and every bale thereof, and whether the same were made with a stencil or brush.

A. I did not see it as it was delivered from the ship. I did not see it until it was at the warehouse; some of the bales were compressed and some were not. I am unable to say how many were compressed and how many not. I don't remember how they were covered, how many had gunny-cloth, and how many hemp-bagging; some bales had rope bands, and some iron, and some were mixed; there was not a full complement of bands on all the bales. I don't know the number with iron bands, nor the number with both; there were marks on; there were marks on the bilge. I don't remember any on the ends; to the best of my recollection some of the marks were black, and some red; to the best of my recollection some of the marks were made with a stencil and some with a brush.

Third cross-interrogatory. Q. If in answer to the third direct interrogatory you say the cotton was other than on the wharf where the Idaho discharged it, and that you saw it discharged, do you know
232 of your own personal knowledge that the cotton was ever discharged from the Idaho? If you saw it any other place than as it was discharged from the Idaho? Did you follow each bale to such place and put any private mark on it so you could distinguish it from any other cotton bearing same shipping-mark? Did you see the cotton discharged from the Idaho, follow each bale to where the cotton was stored, and remain where it was stored, until you made the examination? State exactly what you did with regard to the bales of cotton inquired of.

A. I did not see the cotton discharged from the Idaho. I first saw it after it was stored in the warehouse.

Fourth cross-interrogatory. Q. If in answer to the fourth direct interrogatory you say that you made a search for and ascertained all the marks and figures on the bales, state whether you took the weights of each separate bale. If so, produce them. If you did not, why did you not? Were the marks and weights marked on each bale with the same kind of marking and ink? Can one mark be more easily effaced than another; and, if so, how is it?

A. I did not take the weights; it was not my duty. I did not see any weights marked on the bales; no, some of the marks were red and some black, and some were stencil and some brush; yes, black marks can be more easily effaced than red.

Fifth cross-interrogatory. Q. You are asked to state the condition of the covering of each bale, and whether or not the covering had been in part cut away and repaired. Now, if you state the condition of the covering of each bale, can you swear that such was the condition of the bales immediately on landing from the Idaho? Were you there, and did you make a memorandum of the condition of each bale? Will you *you* testify, of your own knowledge, no repairs were made to the cotton baleing after it was discharged from the tackles of the Idah? Will you swear that these bales of cotton had not been cut to sample and
233 then bagging sewed over the sample-holes before you saw them? You are asked to state fully and in detail all the figures and marks on each of said bales of cotton. Now was there no other cotton on the Idaho of the same marks? If you answer yea, did you examine them, and, if not, why not? What directions had you, or what knowledge, if any, had you to enable you to select the bales you examined from other bales on board the Idaho? State fully these directions, if any, or where you acquired your information.

A. I cannot swear it; I was not there. I cannot so testify. I cannot so swear. I don't know whether there was or not. I only examined the 165 bales in the warehouse as ordered.

Tenth cross-interrogatory. Do you know any other matter or thing which might be of benefit to the libellants in this cause? If so, please declare the same fully and at length, as though specially interrogated thereon.

A. I do not know of any other matter or thing which might be of benefit to the libellants.

G. DEARDEN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, at Liverpool, this 25th day of November, 1870, before me.

S. M. WILDING,
Commissioner.

Deposition of Richard Dwerryhouse.

First interrogatory. Q. What is your name, age, residence, occupation; and what was your occupation in the months of May and June, 1869?

234 A. Richard Dwerryhouse. I am a merchant's clerk; my age, forty-one years. I reside at Hale, near Liverpool. I was chief freight-clerk to Messrs. Guion & Co. at the time mentioned; am so still.

Sixth interrogatory. Q. Were you in the employ of the firm of Guion & Co., of Liverpool, in the month of May, 1869? If yes, in what capacity or position?

A. I was; in the capacity of chief freight-clerk.

Seventh interrogatory. Q. State whether or not the firm of Guion & Co. were the agents in Liverpool of the steamship Idaho in May, 1869, and what you had to do, if anything, with the discharge of her cargo on her arrival at Liverpool in May, 1869.

A. They were the agents of the Idaho in May, 1869. I had nothing personal to do with the discharge of her cargo.

Eighth interrogatory. Q. State whether or not said steamship, upon her arrival at Liverpool from New York, on or about the 20th day of May, 1869, brought any cotton. If yes, give the number of bales and the marks of the bales, and state to whom the said cotton was delivered, and the number of bales of each mark delivered to any person or firm.

A. She did. I do not know the number of bales. I know that 165 bales of a lot of 200 were delivered to Messrs. Baring Brothers & Co., and the other 35 to Messrs. James Finlay & Co. I don't know as to any other.

Ninth interrogatory. Q. Have you any knowledge of the examination by George Dearden and Patrick McAdam of certain bales of cotton brought by the steamship Idaho to Liverpool, England, in the month of May, 1869? If yes, state whether or not you know that the cotton so examined by them was part of the cotton brought to Liver-
235 pool by said steamship in that month, and state fully all that you know, and your means of knowledge on that point; and also state, so far as you know, in whose possession said cotton was from the time of its landing to the time of such examination; and also whether or not there was, to your knowledge, any change or alteration in the marks upon the bales, or in the covering of the bales, from the time of its landing to the time of such examination; and state any facts within your knowledge tending to show whether or not there was any such change or alteration.

A. I have no knowledge of the examination referred to.

Tenth interrogatory. Q. Do you know any other matter or thing that may tend to the advantage of the claimants in this suit? If yes, declare the same fully, as if thereunto specially interrogated.

A. I do not know of any other matter or thing that may tend to the benefit or advantage of the claimants.

First cross-interrogatory. Q. If in answer to the first direct interrogatory you shall state your occupation, give the names of the parties by whom you were employed in such occupation and at the several times mentioned.

A. In the employ of Messrs. Guion & Co. only.

Sixth cross-interrogatory. Q. If you answer yea to the sixth direct interrogatory, state how long you were so employed.

A. I have been so employed for 20 years.

Seventh cross-interrogatory. State between what hours of the day you were on the Idaho, or within reach of the tackles, during the day whilst discharging, in May, 1869?

A. I don't remember what hours.

Eighth cross-interrogatory. Q. If in answer to the eighth direct interrogatory you have given the number of bales and marks on the
236 bales, and the number of bales of each mark delivered to any person or firm, state in what manner 165 bales were delivered to Baring Brothers, if delivered, and 35 bales to James Finlay & Co., and by whom, and under what bill of lading, and whether the same was under the bill of lading of 200 bales shipped by Thomas W. Mann, of New York. Were these bales of cotton delivered promiscuously? Had you any marks or directions by which you could distinguish the 165 bales

from the other 35 bales? If so, state what the distinguishing feature was. What were the directions which enabled you to select the 165 bales from the other 35 bales; wherein was the difference? If any, how many bales of the 165 bales were compressed? If any, how many bales of the 35 bales were compressed, and how many were not compressed, if any? If you state there were delivered the number of bales of each mark, state how that mark was put on—in red or black ink? Did you see any other marks on the bales except that you delivered them by? If so, state that mark or marks. State in what sort of bagging this cotton was, and the number of bales in each kind of bagging. How were these fastened—by iron ties or rope, or otherwise? How many bales were so fastened? Were the marks of this cotton on the heads or sides of the bales? When this cotton was discharged from the Idaho's tackles, could you see any of the sample-holes in the bales?

A. I took no part in the delivery, and am ignorant of the matters inquired of.

Ninth cross-interrogatory. Q. If in answer to the ninth direct interrogatory you state that you know that the cotton examined by Dearden and McAdam was part of the cotton brought to Liverpool by said steamer Idaho, state if of your own personal knowledge you know that it was the same cotton. Were you present at the Idaho when every bale was discharged? Was no cotton discharged from the Idaho until you came in the morning; none discharged whilst you were
237 at your meals or away, and none after you left of an evening? Did you see every truck loaded, and follow it from the Idaho to where the examination took place? Did you remain with it until the examination took place? If you were not with every bale from the time it was landed, and kept your eye on every bale until it was stored, and remained with it until the moment of examination, can you swear that neither the bales were changed nor the marks changed? How long, in your opinion, would it take to change the marks on a bale?

A. I was not present, and am ignorant of the matters inquired of.

Tenth cross-interrogatory. Q. Do you know any other matter or thing which might be of benefit to the libellants in this cause? If so, please declare the same fully and at length, as though specially interrogated thereon.

A. I do not know of any other matter or thing which might be of benefit to the libellants.

First additional interrogatory. Q. What is your name, age, residence, and occupation?

A. Richard Dwerryhouse; forty-one years; Liverpool; chief freight-clerk to Messrs. Guion & Co.

Second additional interrogatory. Q. Were you in the month of May, 1869, a member of or in the employ of the firm of Guion & Co., of Liverpool, England? If yes, state which.

A. I was in the employ of Messrs. Guion & Co., at the time mentioned.

Third additional interrogatory. Q. Did your said firm of Guion & Co. receive at or soon after the arrival at Liverpool of the steamship Idaho, in May, 1869, an order or letter directing the delivery of 165 bales of cotton on board the Idaho on that voyage to any person, or to the order of any person? If yes, where is that paper? Produce it, and
238 annex it to your answer, if in your possession or under your control. If you cannot produce it, or decline to annex the original, then state why you cannot produce it, or why decline to annex the

original, and annex a copy of said paper and of all the indorsements thereon.

A. Such a letter was received by said firm, but is not in my possession.

Fourth additional interrogatory. Q. Did you or your firm deliver 165 bales of cotton, brought to Liverpool upon that voyage, to the holder of said paper? and state by whom that paper was presented to your firm, and to whom you delivered said 165 bales.

A The firm did; it was presented by Baring Brothers & Co.

Fifth additional interrogatory. Q. Do you know any other matter or thing that may be *be* for the advantage of the claimants in this suit; if so, declare the same fully, as if thereunto specially interrogated.

A. I do not.

R. DWERRYHOUSE.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, at Liverpool, this 25th November, 1870, before me.

S. H. WILDING, *Commissioner.*

Deposition of Joseph Thorburn.

First interrogatory. Q. What is your name, age, residence, and occupation. and what was your occupation in the months of May and June 1869.

239 A. Joseph Thorburn; thirty-eight years; Liverpool; manager for Messrs. Guion & Co.; I was the same in May and June, 1869.

Sixth interrogatory. Q. Were you in the employ of the firm of Guion & Co., of Liverpool, in the month of May, 1869; if yes, in what capacity or position?

A. I was; in the capacity of manager.

Seventh interrogatory. Q. State whether or not the firm of Guion & Co. were the agents in Liverpool of the steamship Idaho in May, 1869, and what you had to do, if anything, with the discharge of her cargo on her arrival at Liverpool in May, 1869.

A. They were; I had nothing actually to do with the discharge, but I gave directions as to the delivery of the 200 bales comprised in the bill of lading of Mann.

Eighth interrogatory. Q. State whether or not said steamship, upon her arrival at Liverpool from New York, on or about the 20th day of May, 1869, brought any cotton. If yes, give the number of bales, and the marks of the bales, and state to whom the said cotton was delivered, and the number of bales of each mark delivered to any person or firm.

A. She did, but I am unable to give the number or marks. I am unable to speak as to the delivery of other of the cotton than the 200 bales called for by Mann's bill of lading; of these 165 were delivered to Messrs. Baring Brothers & Co., and 35 to Messrs. James Finlay & Co.; of the 165 bales delivered to Baring Brothers & Co., 99 were marked S A L, and 66 V O X; of the 35 delivered to James Finlay & Co., 21 were marked S A L and 14 V O X.

Ninth interrogatory. Q. Have you any knowledge of the ex-
240 amination by George Dearden and Patrick McAdam of certain bales of cotton brought by the steamship Idaho to Liverpool, England, in the month of May, 1869? If yes, state whether or not you know that the cotton so examined by them was part of the cotton brought to Liverpool by said steamship in that month, and state fully

all that you know, and your means of knowledge on that point; and also state, so far as you know, in whose possession said cotton was from the time of its landing to the time of such examination, and also whether or not there was, to your knowledge, any change or alteration in the marks upon the bales, or in the covering of the bales, from the time of its landing to the time of such examination; and state any facts within your knowledge tending to show whether or not there was any such change or alteration.

A. I have no knowledge of that examination, and am ignorant of the matters inquired of.

Tenth interrogatory. Q. Do you know any other matter or thing that may tend to the advantage of the claimants in this suit? If yes, declare the same fully, as if thereunto specially interrogated.

A. I do not know of any other matter or thing that may tend to the advantage of the claimants.

First cross-interrogatory. Q. If in answer to the first direct interrogatory you shall state your occupation, give the names of the parties by whom you were employed in such occupation, and at the several times mentioned.

A. By Messrs. Guion & Co. only.

Second cross-interrogatory. Q. If in answer to the second direct interrogatory you state you made an examination of 165 bales of cotton landed at Liverpool from the steamship Idaho, from New York, state if you saw each bale of cotton as it was delivered from the ship; if you kept an account or memorandum of each bale as landed from the
241 vessel, and the number of bales; and, if so, produce said memorandum or account so taken. From your examination, state whether or not said cotton was compressed; how many bales were compressed, and the marks thereof? How many bales not compressed, and the marks thereon? How covered—with gunny-cloth or hemp-bagging? How many bales had gunny-cloth covering, and how many hemp-bagging? What were the bands around the cotton—rope or iron; and were there the full complement of bands on each bale of cotton? If you shall state both rope and iron, how many of each? Were there any marks upon said cotton? If so, state the position, character, and color of the same on each and every bale thereof, and whether the same were made with a stencil or brush.

A. I saw none of the bales, and am ignorant of the matters inquired of.

Seventh cross-interrogatory. Q. State between what hours of the day you were on the Idaho, or within reach of the tackle, during the day whilst discharging, in May, 1869.

A. I was not on the Idaho.

Eighth cross-interrogatory. Q. If in answer to the eighth direct interrogatory you have given the number of bales and marks on the bales, and the number of bales of each mark delivered to any person or firm, state in what manner 165 bales were delivered to Baring Brothers, if delivered, and 35 bales to James Finlay & Co., and by whom, and under what bill of lading, and whether the same was under the bill of lading of 200 bales shipped by Thomas W. Mann, of New York. Were these bales of cotton delivered promiscuously? Had you any marks or directions by which you could distinguish the 165 bales from the other 35 bales? If so, state what the distinguishing feature was. What were the directions which enabled you to select the 165 bales from the other 35 bales? Wherein was the difference? If any, how many bales
242 of the 165 bales were not compressed? If any, how many bales of the 35 bales were compressed, and how many were not com-

pressed, if any? If you state there were delivered the number of bales of each mark, state how that mark was put on—in red or black ink. Did you see any other marks on the bales except that you delivered them by? If so, state that mark or marks. State in what sort of bagging this cotton was, and the number of bales in each kind of bagging. How were these fastened—by iron ties or rope, or otherwise? How many bales were so fastened? Were the marks of this cotton on the heads or sides of the bales? When this cotton was discharged from the Idaho's tackles, could you see any of the sample-holes in the bales?

A. One hundred and sixty-five bales were delivered under the direction of Williams & Guion and 35 under the bill of lading; they were taken promiscuously; I received from Messrs. James Finlay & Co. the delivery order of which I annex a copy hereto, marked B; I decline to annex the original. In addition, it was verbally arranged with Baring Brothers & Co. and James Finlay & Co. that they should take the cotton taken promiscuously, without prejudice to their respective rights; I am ignorant of the other matters inquired of in this interrogatory.

Ninth cross-interrogatory. Q. If in answer to the ninth direct interrogatory you state that you know that the cotton examined by Dearden and McAdam was part of the cotton brought to Liverpool by said steamer Idaho, state if, of your own personal knowledge, you know that it was the same cotton. Were you present at the Idaho when every bale was discharged? Was no cotton discharged from the Idaho until you came in the morning; none discharged whilst you were at your meals, or away, and none after you left of an evening? Did you see every truck loaded, and follow it from the Idaho to where the examination took place? Did you remain with it until the examination took place? If you were not with every bale from the time it was so
243 landed, and kept your eye on every bale until it was stored, and remained with it until the moment of examination, can you swear that neither the bales were changed, nor the marks were changed? How long, in your opinion, would it take to change the marks on a bale?

A. I am ignorant of the matters inquired of.

Tenth cross-interrogatory. Q. Do you know any other matter or thing which might be of benefit to the libellants in this cause? If so, please declare the same fully and at length, as though specially interrogated thereon.

A. I do not know of any other matter or thing which might be of benefit to the libellants in this cause.

First additional interrogatory. Q. What is your name, age, residence, and occupation?

A. Joseph Thorburn; thirty-eight years; Liverpool; manager for Messrs. Guion & Co.

Second additional interrogatory. Q. Were you in the month of May, 1869, a member or in the employ of the firm of Guion & Co., of Liverpool, England? If yes, state which.

A. I was employed by Messrs. Guion & Co. as manager at the time mentioned.

Third additional interrogatory. Did your said firm of Guion & Co. receive at or soon after the arrival at Liverpool of the steamship Idaho, in May, 1869, an order or letter directing the delivery of 165 bales of cotton on board the Idaho on that voyage to any person, or to the order of any person? If yes, where is that paper? Produce it and annex it to your answer, if in your possession or under your control. If you cannot produce it, or decline to annex the original, then state why you cannot produce it, or why you decline to annex the original, and

annex a copy of said paper and of all the indorsements thereon.

244 A. Messrs. Guion & Co. received a letter from Williams & Guion, New York, dated 5th May, 1869, of which I annex a copy hereto, marked "C;" a letter from Baring Brothers & Co, dated 18th May, 1869, of which I annex a copy hereto, marked "D;" and delivery-order from Baring Brothers & Co., dated 20th May, of which the paper produced and shown to me, marked "E," is a copy. I decline to annex the originals, as they may be wanted here. Copies of all the indorsements are given on the copies.

Fourth additional interrogatory. Q. Did you or your firm deliver 165 bales of cotton, brought to Liverpool upon that voyage, to the holder of said paper? and state by whom that paper was presented to your firm, and to whom you delivered said 165 bales.

A. We did. It was presented by Baring Brothers & Co., to whom we delivered the 165 bales.

Fifth additional interrogatory. Do you know any other matter or thing that may be for the advantage of the claimants in this suit? If so, declare the same fully, as if thereunto specially interrogated.

A. I do not know of any other matter or thing that may be for the advantage of the claimants.

First additional cross-interrogatory. Q. Had the steamer Idaho, or her agents in New York, given any bill of lading for a lot of cotton of which the 165 bales you allude to formed a part? If you answer yea, state how many bales the bill of lading was for; what were the marks on the bales by the bill of lading; how many bales of each mark. State in what way you selected the 165 bales from the other cotton; by what and whose directions, if any, and how came you to deliver the 165 bales you did.

A. She had. It was for 200 bales. The marks were "S A L" 120 bales, and "V O X" 80 bales. I have already stated fully in my answer to the eight' interrogatory in what way they were selected.

245 Second cross-interrogatory. Q. Please procure from the proper officer of the court in which the suit of James Finlay & Co. against the Great Western Steamship Company (limited) is pending, a certified copy of your answer to the declaration therein, and annex the same to your deposition.

A. I have not made any answer to the pleadings, not being a party to that suit.

JOS. THORBURN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to at Liverpool, this 25th day of November, 1870, before me.

S. H. WILDING,
Commissioner.

Deposition of Martin Gavin.

First interrogatory. Q. What is your name, age, residence, and occupation, and what was your occupation in the months of May and June, 1869?

A. Martin Gavin; age, forty-eight years; at Liverpool. I am overlooker for Baring Brothers & Co., and was the same in the months of May and June, 1869.

Second interrogatory. Q. Did you, on or about the 20th day of May, 1869, make an examination of a lot of cotton consisting of 165 bales, landed at Liverpool, England, from the steamship Idaho, from New

York? If yes, state when the examination was made, at whose request, and where it was made, and what was the nature and extent of that examination.

A. I did make such an examination. It was about the 20th and
246 21st of May, 1869, at the request of Baring Brothers & Co., on the quay of the London dock, in Liverpool, alongside the steamer Idaho; its extent and nature were to see that the marks on the bales corresponded with the delivery-order, of which a copy is annexed hereto, marked "E." I decline to part with the original. I saw the same bales in Baring's warehouse when they were being examined by Dearden and McAdam.

Third interrogatory. Q. In whose possession was the cotton so examined at the time of its examination, and when and where did you first see the cotton; and what do you know, if anything, as to its arrival in England, and in whose possession, and where it had been from the time of its arrival till the time of your examination of it?

A. It was in the possession of Guion & Co. I saw it first on the London-dock quay, alongside the steamer Idaho, on the 20th or 21st of May, 1869. I do not know of its arrival in England, as it had been discharged before I got to the quay, apparently from the Idaho.

Fourth interrogatory. Q. Did you or not make a search for and ascertain all the marks and figures on the said bales of cotton? Did you also take any notice, and if so, what, of the condition of the covering of said bales?

A. I only searched for and ascertained the marks "S A L" and "V O X." Most of the bales had patches of extra canvas.

Fifth interrogatory. Q. Please state fully and in detail all the marks and figures on each of said bales of cotton, and also the condition of the covering of each bale, and whether or not the covering had been in part cut away and repaired, and generally all that you observed as to its condition.

A. I am unable to state other than the marks I have already stated.
When I saw the cotton in the warehouse I noticed that some of
247 the coverings had been cut away and repaired, but I did not notice when I saw them at the ship, further than what I have already stated.

Ninth interrogatory. Q. Have you any knowledge of the examination by George Dearden and Patrick McAdam, of certain bales of cotton brought by the steamship Idaho to Liverpool, England, in the month of May, 1869? If yes, state whether or not you know that the cotton so examined by them was part of the cotton brought to Liverpool by said steamship in that month, and state fully all that you know, and your means of knowledge on that point; and also state, so far as you know, in whose possession said cotton was from the time of its landing to the time of such examination, and also whether or not there was, to your knowledge, any change or alteration in the marks upon the bales, or in the covering of the bales, from the time of its landing to the time of such examination; and state any facts within your knowledge tending to show whether or not there was any such change or alteration.

A. I have. I was present during the examination—in and out of the warehouse while it took place. The examination took place about a month after I received delivery alongside of the ship. The cotton that I saw so examined was the same cotton I saw on the quay, as before stated. I knew it from the appearance of the cotton and the marks S A L and V O X. From the time I took delivery, as before stated, it was in possession of Baring Brothers & Co.; there was no change from

the time I so received it until the examination by Dearden and McAdam. I judged from the marks and appearance of the cotton.

Tenth interrogatory. Q. Do you know any other matter or thing that may tend to the advantage of the claimants in this suit? If yes, declare the same fully, as if thereunto specially interrogated.

A. I do not know of any other matter or thing that may tend to the advantage of the claimants.

248 First cross-interrogatory. Q. If in answer to the first direct interrogatory you shall state your occupation, give the names of the parties by whom you were employed in such occupation, and at the several times mention'?

A. I have only been employed by Baring, Brothers & Co.

Second cross-interrogatory. Q. If, in answer to the second direct interrogatory, you state you made an examination of 165 bales of cotton landed at Liverpool from the steamship Idaho, from New York, state if you saw each bale of cotton as it was delivered from the ship; if you kept an account or memorandum of each bale as landed from the vessel, and the number of bales; and if so, produce said memorandum or account so taken. From your examination, state whether or not said cotton was compressed; how many bales were compressed, and the marks thereof; how many bales not compressed, and the marks thereon; how covered—with gunny-cloth or hemp bagging; how many bales had gunny-cloth covering, and how many hemp bagging; what were the bands around the cotton—rope or iron—and were there the full complement of bands on each bale of cotton. If you shall state both rope and iron, how many of each? Were there any marks upon said cotton? If so, state the position, character, and color of the same on each and every bale thereof, and whether the same were made with a stencil or brush.

A. I did not see them landed from the ship. I did not make any memorandum. It seemed to me to be compressed cotton. I don't know how many; I think all were compressed, to the best of my recollection; some were covered with gunny-cloth and some with hemp bagging. Some of the bands were ropes and some iron. The marks were black, put on with a brush; they were on the side—I refer to the marks S A L and V O X. They had their full complement of bands. I don't know how many were rope and how many of iron.

249 Third cross-interrogatory. Q. If, in answer to the third direct interrogatory, you say the cotton was other than on the wharf where the Idaho discharged it, and that you saw it discharged, do you know, of your own personal knowledge, that the cotton was ever discharged from the Idaho? If you saw it any other place than as it was discharged from the Idaho, did you follow each bale to such place and put any private mark on it, so you could distinguish it from any other cotton bearing same shipping-mark? Did you see the cotton discharged from the Idaho, follow each bale to where the cotton was stored, and remain where it was stored until you made the examination? State exactly what you did with regard to the bales of cotton inquired of.

A. I did not see the cotton discharged from the Idaho, but I saw it on the quay alongside of her, and believed that it was discharged from her. I did not follow the cotton from the quay to the warehouse, nor put any private mark on it, but I was satisfied it was the same cotton, for the reasons I have stated. I saw most part of it put on the cart.

Fourth cross-interrogatory. Q. If, in answer to the fourth direct interrogatory, you say that you made a search for and ascertained all the marks and figures on the bales, state whether you took the weights of each

separate bale. If so, produce them. If you did not, why did you not? Were the marks and weights marked on each bale with the same kind of marking and ink? Can one mark be more easily effaced than another; and if so, how is it?

A. I did not take the weights. I did not observe that any weights were marked on the bales. It was not my business to take the weights. The marks were with the same kind of marking and ink. No; one cannot be more easily effaced than another.

250 Fifth cross-interrogatory. Q. You are asked to state the condition of the covering of each bale, and whether or not the covering had been in part cut away and repaired. Now, if you state the condition of the covering of each bale, can you swear that such was the condition of the bales immediately on landing from the Idaho? Were you there, and did you make a memorandum of the condition of each bale? Will you testify, of your own knowledge, no repairs were made to the cotton-baleing after it was discharged from the tackles of the Idaho? Will you swear that these bales of cotton had not been cut to sample, and then bagging sewed over the sample holes before you saw them? You are asked to state fully and in detail all the figures and marks on each of said bales of cotton. Now, was there other cotton on the Idaho of the same marks? If you answer yea, did you examine them; and if not, why not? What directions had you, or what knowledge, if any, had you to enable you to select the bales you examined from other bales on board the Idaho? State fully these directions, if ny, or where you acquired your information.

A. I did not notice, until I saw them in the warehouse, that part had been cut away and repaired, but I did notice when I saw them on the quay that the covers were patched. I was there, as before stated, but I made no memorandum; there were no repairs made after I received them on the quay, as before stated, until they were examined in the warehouse by Dearden and McAdam. I cannot swear that. I don't know all the figures and marks; there were thirty-five other bales of the same marks. I did not examine them; they had been delivered to another party before I got to the ship. I had no directions but to receive the 165 bales of the marks mentioned in the delivery order. I received my information about the 35 bales from Guion's man.

Tenth cross-interrogatory. Q. Do you know any other matter or thing which might be of benefit to libellants in this cause? If so,

251 please declare the same fully and at length, as though specially interrogated thereon.

A. I do not know of any other matter or thing which might be of benefit to the libellants.

MARTIN GAVIN.

Examination taken, reduced to writing, and by the witness subscribed and sworn to at Liverpool, the 25th November, 1870, before me.

S. H. WILDING, *Commissioner.*

Deposition of Henry Evison.

First interrogatory. Q. What is your name, age, residence, and occupation, and what was your occupation in the months of May and June, 1869?

A. Henry Evison. I am thirty-five years of age. I reside at Liverpool, and am employed as a freight-clerk by Messrs. Guion & Co. I was

of the same occupation and employment in the months of May and June, 1869.

Sixth interrogatory. Q. Were you in the employ of the firm of Guion & Co., of Liverpool, in the month of May, 1869? If yes, in what capacity or position?

A. I was. I was employed in the capacity of a freight-clerk.

Seventh interrogatory. Q. State whether or not the firm of Guion & Co. were the agents in Liverpool of the steamship Idaho in May, 1869, and what you had to do, if anything, with the discharge of her cargo on the arrival at Liverpool in May, 1869.

252 A. They were. I was present when it was discharged, and had to see that the marks on the cargo had to agree with the manifest.

Eighth interrogatory. Q. State whether or not said steamship, upon her arrival at Liverpool from New York, on or about the 20th day of May, 1869, brought any cotton. If yes, give the number of bales and the marks of the bales, and state to whom the said cotton was delivered, and the number of bales of each mark delivered to any person or firm.

A. She did. I produce and annex a detailed statement, marked "F," showing the number of bales and marks, the same being an extract from the delivery-book kept by me. I decline to annex the original, as it is in the book, and may be wanted.

Ninth interrogatory. Q. Have you any knowledge of the examination, by George Dearden and Patrick McAdam, of certain bales of cotton brought by the steamship Idaho to Liverpool, England, in the month of May, 1869? If yes, state whether or not you know that the cotton so examined by them was part of the cotton brought to Liverpool by said steamship in that month, and state fully all that you know and your means of knowledge on that point; and also state, so far as you know, in whose possession said cotton was from the time of its landing to the time of such examination; and also whether or not there was, to your knowledge, any change or alteration in the marks upon the bales, or in the covering of the bales, from the time of its landing to the time of such examination, and state any facts within your knowledge tending to show whether or not there was any such change or alteration.

A. I have no knowledge of that examination.

Tenth interrogatory. Q. Do you know any other matter or thing that may tend to the advantage of the claimants in this suit? If yes, declare the same fully, as if thereunto specially interrogated.

253 A. I do not know of any other matter or thing that may tend to the advantage of the claimants.

First cross-interrogatory. Q. If, in answer to the first direct interrogatory, you shall state your occupation, give the names of the parties by whom you were employed in such occupation, and at the several times mentioned.

A. In Guion's employment only, as freight-clerk.

Seventh cross-interrogatory. Q. State between what hours of the day you were on the Idaho, or within reach of the tackles, during the day whilst discharging, in May, 1869?

A. I was not on the Idaho, but I saw the cotton discharged from her onto the quay.

Eighth cross-interrogatory. Q. If, in answer to the eighth direct interrogatory, you have given the number of bales and marks on the bales, and the number of bales of each mark delivered to any person or firm, state in what manner 165 bales were delivered to Baring Brothers, if delivered, and 35 bales to James Finlay & Co., and by whom, and under what bill of lading, and whether the same was under the bill of lading

of 200 bales shipped by Thomas W. Mann, of New York. Were these bales of cotton delivered promiscuously? Had you any marks or directions by which you could distinguish the 165 bales from the other 35 bales? If so, state what the distinguishing feature was. What were the directions which enabled you to select the 165 bales from the other 35 bales? Wherein was the difference? If any, how many bales of the 165 bales were compressed? If any, how many bales of the 165 bales were not compressed? If any, how many bales of the 35 bales were compressed, and how many were not compressed, if any? If you state there were delivered the number of bales of each mark, state how that mark was put on—in red or black ink? Did you see any other mark on the bales except that you delivered them by? If so, state that
254 mark or marks. State in what sort of bagging this cotton was, and the number of bales in each kind of bagging. How were these fastened—by iron ties or rope, or otherwise? How many bales were so fastened? Were the marks of this cotton on the heads or sides of the bales? When this cotton was discharged from the Idaho's tackles, could you see any of the sample-holes in the bales?

A. The 165 bales delivered to Baring Brothers & Co. and 35 delivered to James Finlay & Co. composed the 200 included in Man's bill of lading; they were delivered promiscuously. I had none. I had directions from Mr. Thorburn to deliver them promiscuously. I did not notice whether they were compressed or not. The marks were in black ink. I did not notice any other marks than S A L and V O X. I did not notice the character of the bagging or the ties. I don't remember the position of the marks. I don't remember seeing any sample-holes.

Ninth cross-interrogatory. Q. If, in answer to the ninth direct interrogatory, you state that you know the cotton examined by Dearden and McAdam was part of the cotton brought to Liverpool by said steamer Idaho, state if of your own personal knowledge you know that it was the same cotton. Were you present at the Idaho when every bale was discharged. Was no cotton discharged from the Idaho until you came in the morning; none discharged whilst you were at your meals, or away, and none after you left of an evening? Did you see every truck loaded, and follow it from the Idaho to where the examination took place? Did you remain with it until the examination took place? If you were not with every bale from the time it was landed, and kept your eye on every bale until it was stored, and remained with it until the moment of examination, can you swear that neither the bales were changed nor the marks changed? How long, in your opinion, would it take to change the marks on a bale?

A. I have stated that I have no knowledge of that examination.

255 Tenth cross-interrogatory. Q. Do you know any other matter or thing which might be of benefit to libellants in this cause? If so, please declare the same fully and at length, as though specially interrogated thereon.

A. I do not.

Additional interrogatories.

First Q. What is your name, age, residence, and occupation?

A. Henry Evison; 35 years; Liverpool; a freight-clerk in the employment of Messrs. Guion & Co.

Second Q. Were you in the month of May, 1869, a member of or in

the employ of the firm of Guion & Co., of Liverpool, England? If yes, state which.

A. I was in their employ as freight-clerk.

Third Q. Did your said firm of Guion & Co. receive, at or soon after the arrival at Liverpool of the steamship Idaho, in May, 1869, an order or letter directing the delivery of 165 bales of cotton on board the Idaho, on that voyage, to any person, or to the order of any person? If yes, where is that paper? Produce it, and annex it to your answer, if in your possession or under your control. If you cannot produce it, or decline to annex the original, then state why you cannot produce it, or why you decline to annex the original, and annex a copy of said paper and of all the endorsements thereon.

A. I am ignorant of the matters inquired of.

Fourth Q. Did you or your firm deliver 165 bales of cotton, brought to Liverpool upon that voyage, to the holder of said paper? and state by whom that paper was presented to your firm, and to whom you delivered said 165 bales.

A. All I know is that 165 bales were delivered to Baring Brothers & Co. and 35 bales to James Finlay & Co.

256 Fifth Q. Do you know any other matter or thing that may be for the advantage of the claimants in this suit? If so, declare the same fully, as if thereunto specially interrogated.

A. I do not.

Additional cross-interrogatories.

First additional cross-q. Had the steamer Idaho, or her agents in New York, given any bill of lading for a lot of cotton of which the 165 bales you allude to formed a part? If you answer yea, state how many bales the bill of lading was for; what were the marks on the bales by the bill of lading; how many bales of each mark. State in what way you selected the 165 bales from the other cotton; by what and whose directions, if any. How came you to deliver the 165 bales you did?

A. I did not see the bill of lading. I have already stated the 165 bales were selected promiscuously, and how I delivered them by Mr. Thorburn's orders.

Second additional cross-q. Please procure from the proper officer of the court in which the suit of James Finlay & Co. against the Great Western Steamship Company (limited) is pending, a certified copy of your answer to the declaration therein, and annex the same to your deposition.

A. I have made no answer, not being a party to the suit.

HENRY EVISON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to at Liverpool, this 25th day of November, 1870, before me.

S. H. WILDING,
Commissioner.

257 Libellants read from said Liverpool commission the following:

Deposition of George Lyon.

First interrogatory. Q. What is your name, age, residence, and occupation; and what was your occupation in the months of May and June, 1869?

A. George Lyon. My age is 45 years. I reside in Liverpool, and am a porter. I was in May and June, 1869, in the employment of Messrs. Smith, Edwards & Co. I was the same in May and June, 1869.

Fourth Q. Did you, in May, 1869, make an examination of a lot of cotton, containing 165 bales, landed at Liverpool, England, from the steamship Idaho, from New York? If yes, state when the examination was made, and at whose request, and where was it made, and what was the nature and extent of that examination.

A. I did not make the examination, and am ignorant of the matters inquired of.

Fifth Q. In whose possession was the cotton so examined at the time of its examination, and when and where did you first see the cotton; and what do you know, if anything, as to its arrival in England; and in whose possession, and where it had been from the time of its arrival till the time of your examination of it?

A. I am ignorant of the matters inquired of.

Sixth Q. Did you or not make a search for and ascertain all the marks, figures, on the said bales of cotton? Did you also take any notice, and if so, what, of the condition of the covering of said bales?

A. I am ignorant of the matters inquired of.

Seventh Q. Please state fully and in detail all the marks and
258 figures on each of said bales of cotton, and also the condition of the covering of each bale, and whether or not the covering had been in part cut away and repaired, and generally all that you observed as to its condition.

A. I am ignorant of the matters inquired of.

Eighth Q. Do you know any other matter or thing that may tend to the advantage of the libellants in this suit? If yea, declare the same fully, as if thereunto specially interrogated.

A. I can only speak of the 35 bales delivered to James Finlay & Co., and know nothing except with reference to them. I know nothing.

First cross-q. Did you make an examination of any of the bales of cotton landed from the steamship Idaho in Liverpool in May, 1869, besides the 165 bales to which you testify in reply to the fourth direct interrogatory? If yes, state how many of such other bales you examined, when you examined them, at whose request, where they were and in whose possession when the examination was made, and where they had been and in whose possession, if you know, from the time of the landing thereof until the time of such examination; and state the nature and extent of such examination.

A. I did. I examined 35 bales on the 21st of May, 1869, at the request of James Finlay & Co., in Smith, Edwards & Co.'s warehouse, Queen street, Liverpool, in possession of Smith, Edwards & Co.; they had come from the steamer Idaho; they had been in possession of the master porters of the steamer Idaho and the carters who brought them from the ship. I carefully examined each bale, and took a memorandum of the gin-marks, as far as they could be made out, and of the old numbers on the 21 marked "S A L," there being no old numbers on the 14 marked "V O X;" annexed copy, marked "K."

Second cross-q. If, in answer to the first cross-interrogatory, you
259 state that you made such examination of any of such other bales, then state in detail all the marks and figures that you found thereon, and designate, as far as you are able, the part of the bale on which the marks and figures testified to by you were, and describe the size and nature of the marks as fully as you are able, and state whether or not you made a memorandum at the time of such examination of such

marks and figures. If yes, please annex it to your answer. If you decline to annex the original, state the reason why you decline to do so, and annex a copy.

A. I annex hereto, marked K, a list of the marks and figures. The figures and proper marks were on the bilge, and the gin-marks on the end. The marks were about six to eight inches long. They were in black ink, made by a brush. I did make a memorandum at the time. I annex a copy, marked K. I decline to annex the original, as it forms part of a book.

Third cross-q. Did you weigh or note the weight of such other bales? If yes, give the weight of each bale, designating the bale by its marks, if any, and state whether you weighed it, or how otherwise you ascertained the weight.

A. The weights are stated in the paper marked K, referred to in my answer to the second cross-interrogatory. I weighed it myself, and noted the weights.

Fourth cross-q. Have you in answer to the second cross-interrogatory given all the marks and figures of every kind that you saw on each of the bales of cotton in said interrogatory referred to? If not, give the same now fully and in detail.

A. I have given them fully.

GEORGE LYON.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, at Liverpool, this 25th day of November, 1870, before me.

S. H. WILDING,
Commissioner.

260 At the execution of a commission for the examination of witnesses between Henry Hentz et al., libellants, and Steamship Idaho, the Liverpool and Great Western Steamship Co., claimants, this paper-writing was produced and shown to the witnesses, Patrick McAdam and George Dearden, and by them deposed unto at the time of their examination before , commissioner:

EXHIBIT A.

Particulars of marks, &c., on 165 bales cotton steamship Idaho.

	Mark on bale.	Old No.	New No.						
V O X	.....	.....	1	Original mark cut out;		1 yard	extra canvas	on	bale.
"	L	.....	2	"	"	2 yards	"	"	
			3	"	"	1 yard	"	"	
	L	6	4	"	"	"	"	"	
			5	"	"	no	"	"	
			6	"	"	3 yards	"	"	
	D D	11	7	"	"	1 yard	"	"	
		5	8	"	"	"	"	"	
			9	"	"	"	"	"	
			10	"	"				
			11	"	"	1 yard	"	"	
			12	"	"				
			13	"	"	1 yard	"	"	
			14	"	"	"	"	"	
			15	"	"	2 yards	"	"	

EHHIBIT A—Continued.

261	Mark on bale.	Old No.	New No.	
	O	.....	16	Original mark cut out; 1 yard extra canvas on bale.
			17	" " " " "
			18	" "
	E E	38	19	" " 2 yards " "
	O	.....	20	" " 1 yard " "
	O	.....	21	" " " "
	D D	21	22	Bale not cut; ½ yard extra canvas on bale.
	V	5	23	" "
	O	.....	24	" "
			25	Original mark cut out.
			26	" " ½ yard extra canvas on bale.
V O X	J J	.....	27	Bale not cut.
			28	Original mark cut out; ½ yard canvas extra on bale.
			29	" "
			30	" " ½ yard " "
V O X	.....	.....	31	Original mark cut out; 1 yard canvas extra on bale.
			32	" " " 1 " " "
	O	.....	33	" " " 1 " " "
			34	" "
			35	" "
	L	.....	36	" "
			37	" " 1 yard canvas extra on bale.
			38	" "
			39	" "
			40	" "
			41	" "
	O	53	42	" "
			43	" "
			44	" "
			45	" "
		22	46	" "
		3	47	" "
	S	.....	48	" "
			49	" "
			50	" "
			51	" "
	F	.....	52	" "
	G	1	53	" "
			54	" "
			55	" "
	O	.....	56	" "
		35	57	" "
			58	" "
	L	0	59	Mark not cut out.
	E E	.....	60	Original mark cut out; 1 yard extra canvas on bale.
			61	" "
			62	" "
	E E	5	63	" " 1 yard extra canvas on bale.
	L	.....	64	" "
			65	" "
			66	" "
S A L	E E	11	67	Original mark cut out of bale.
		20	68	" " "
			69	" " "
		23	70	Bale not cut.
			71	Original mark cut out.
			72	" "
			73	" "
			74	" "
			75	" "

EXHIBIT A—Continued.

262	Mark on bale.	Old No.	New No.	
S A L	.....	45	76	Original mark cut out.
		35	77	" "
	T E	.....	78	" " 2 yards extra canves.
	O	.....	79	" "
			80	" "
			81	" " 1 yard canvas.
	J D F	50	82	" "
			83	" "
			84	" "
			85	" "
			86	" "
			87	" "
			88	" "
	W A S H	73	89	Bale not cut.
			90	" "
			91	" "
	F	.....	92	Original mark cut out.
			93	" "
			94	" "
			95	" "
	E	.....	96	" "
		31	97	Bale not cut.
			98	Original mark cut out.
			99	" " 1 yard extra canvas.
	O	.....	100	" "
			101	" "
			102	" " 2 yards extra canvas.
			103	" "
F F	F F			
F	F	5	104	Bale not cut; 2 yards extra canvas.
	W & C	.....	105	Original mark cut out.
		66	106	Bale not been cut; 2 yards extra canvas.
	o	.....	107	" "
			108	Original mark cut out.
			109	" "
		29	110	" "
			111	" "
			112	" " 1 yard extra canvas.
			113	" "
	◇T◇	.....	114	Bale not cut; 1 yard extra canvas.
		35	115	" "
		34	116	" "
		37	117	" "
		22	118	" "
		3	119	" "
S A L	S S W	.....	120	Bale not cut.
		2	121	Original mark not cut out; 1 yd. extra canvas on bale.
		38	122	Bale not cut.
		98	123	" "
	E S T J R	17	124	Original mark cut out.
			125	Bale not cut.
	O	47	126	" "
	D D O	.....	127	Original mark cut out.
	o	.....	128	Bale not cut.
	o	.....	129	" "
			130	Original mark cut out.
			131	" "
			132	" "
	O	.....	133	" "
			134	" "
		10	135	Bale not cut.

EXHIBIT A—Continued.

263	Mark on bale.	Old No.	New No.		
			136	Original mark cut out.	
			137	" "	
			138	" "	
			139	" "	
			140	" "	
			141	" "	
			142	" "	
	W A S H	61	143	Bale not cut.	
		81	144	" "	
		47	145	" "	
	o	.....	146	" "	
		39	147	" "	
			148	Original mark cut out.	
	O	22	149	" "	
			150	" "	
			151	" "	1 yard extra canvas.
			152	" "	
			153	" "	
		21	154	Bale not cut.	
			155	Original mark cut out.	
			156	" "	
			157	" "	
			158	" "	½ yard extra canvas.
			159	" "	
	o	14	160	Bale not cut.	
		31	161	Original mark cut out.	
			162	" "	
	O	.....	163	" "	
			164	" "	
			165	" "	

264 EXHIBIT B.

At the execution of a commission for the examination of witness, between Henry Hentz et al., libellants, and Steamship Idaho, the Liverpool and Great Western Steamship Co., claimants, this paper-writing was produced and shown to the witness, Joseph Thorburn, and by him deposed unto at the time of his examination before .

No. 11.] LIVERPOOL, 19*th May*, 1869.

To the consignee and master-porter of steamship Idaho, from New York:

Please deliver to bearer the following goods, of which we are consignees; and we undertake to pay porterage-charges and freight and primage thereon, as per bill of lading in our possession:

"S A L," 21; "V O X," 14.
Thirty-five bales cotton.

But we receive such 35 bales without prejudice to our right to recover the remaining 165 bales, according to bill of lading in our possession, and damages in the detention.

P. pro. JAMES FINLAY & CO.
ROBT. JACKSON.

(Indorsed:) Guion & Co., p. J. Thorburn.

EXHIBIT C.

At the execution of a commission for the examination of witnesses,

between Henry Hentz et al., libellants, and the Steamer Idaho, the Liverpool and Great Western Steamship Co., claimants, this paper-writing was produced and shown to the witness, Joseph Thornbin, and by him deposed unto at the time of his examination before me.

JOS. THORNBIN.

265 OFFICE OF WILLIAMS & GUION,
71 *Wall Street, New York, May 5th*, 1869.

Messrs. GUION & Co., *Liverpool:*

GENTLEMEN: Mr. William J. Porter has replevied 165 bales of cotton, part marked "S A L," the residue "V O X," on board the Idaho, claiming them under bills of lading of the brig C. C. Colson, issued at New Orleans.

You will please deliver to his order said 165 bales on payment of our freight. We are indemnified against the bills of lading issued by us. This is part of bill of lading for 200 bales shipped by Thomas W. Mann, marked "S A L," 120, and "V O X," 80. Ship's mark, "O."

Yours, truly,

WILLIAMS & GUION.

(Indorsed as follows:)
Deliver to Messrs. Duncan, Sherman & Co., or order.

W. J. PORTER,
By R. W. BROWN.

Deliver to the order of Messrs. Baring Brothers & Co.

DUNCAN, SHERMAN & CO.
P. pro BARING BROTHERS & CO.
WM. B. HALHEAD.

EXHIBIT D.

At the execution of a commission for the examination of witnesses, between Henry Hentz et al., libellants, and the Steamer Idaho, the Liverpool and New York Great Western Steamship Co., claimants, this paper-writing was produced and shown to the witness, Joseph Thornbin, and by him deposed unto at the time of his examination before me.

JOS. THORNBIN.

LIVERPOOL, 18*th May*, 1869.

Messrs. GUION & Co.:

DEAR SIRS: We have received from our friends, Messrs. Dun-
266 can, Sherman & Co., of New York, an order on you, signed by Messrs. Williams & Guion, for 165 bales cotton, marked "S A L" and "V O X," part of 200 bales shipped per steamship Idaho, now in the river, and we shall be obliged if you will acknowledge and confirm this.

We remain, dear sirs, yours, faithfully,

BARING BROS. & CO.

EXHIBIT E.

At the execution of a commission for the examination of witnesses, between Henry Hentz et al. and the Steamer Idaho, the Liverpool and

New York Great Western Steamship Co., claimants, this paper-writing was produced and shown to the witnesses, Joseph Thornbin and Martin Gavin, and by them deposed unto at the time of their examination.

JOS. THORNBIN.
MARTIN GAVIN.

No. LIVERPOOL, 20*th May*, 1869.

To the consignee and master-porter of steamship Idaho, from New York:

Please deliver to bearer the following goods, of which we are consignees, and we undertake to pay porterage charges and freight and primage thereon, as per bill of lading in our possession:

"S A L," 99; "V O X," 66.
One hundred and sixty-five bales cotton.

For BARING BROS. & CO.,
E. W. BALDWIN.

To be sent to Neptune street.

EXHIBIT F.

At the execution of a commission for the examination of witnesses, between Henry Hentz et al., libellants, and the Steamer Idaho, the Liverpool and New York Great Western Steamship Co., claimants, this paper-writing was produced and shown to the witness, Henry Ewin, and by him deposed at the time of his examination before me—

HENRY EWIN.

Goods.	Consignees.	Weight. Cwt.	Qrs.	Lbs.
1) [G H]	Acc't F. & W. Earle:			
	19 bales cotton	80	1	18 G
	9,006 lbs.	3	.....	24 T
24 | 5 | 69		77	.....	22 N
	Acc't Eason, Barry & Co.:			
2) J | P | S	40 bales cotton	160	2	15
3) C [O] P	26 " "	110	1	3
3) P [L] K	14 " "	54	3	19
4) R T H	19 " "	75	2	2
4) W O B	13 " "	53	3	22
4) A O M	2 " "	7	1	18
	114	462	2	23 G
	51,823 lbs.	18	2	1 T
5 | 21 | 69		444	.....	22 W
5)	Acc't Nicholson & Wrigley:			
J C S	51 bales cotton	223	.....	17 G
	24,993 lbs.	8	3	20 T
5 | 21 | 69		214	.....	25 N
6)	Acc't Frangupula Agelasto:			
F A 2	30 bales cotton	124	3	G
	13,972 lbs.	4	3	27 T
20 | 5 | 69		119	3	1 W

Goods.	Consignees.	Weight. Cwt.	Qrs.	Lbs.
7) [D D]	Acc't Thompson, McKay & Co.:			
	19 bales cotton	81	1	15 G
	9,115 lbs.	3	1	1 T
5 | 21 | 69		78	.....	14 N
268 14) W (E)	Acc't Rogers & Caldin:			
	2 bales cotton	9	.....	.....
12) " (F)	51 " "	225	2	4
13) " (G)	51 " "	231	1	10
14 (H)	19 " "	81	2	1
	123	547	1	15 G
	61,307 lbs.	21	3	16 T
24 | 5 | 69		525	1	27 N
16) J [M]	Acc't L. & N. W. Railway Co.:			
	119 bales cotton	447	2	21 G
	53,501 lbs.	19	"	12 T
24 | 5 | 69		458	2	9 N
17) F O—E R	Acc't Stricken & Co.:			
	56 bales cotton	205	1	7 G
	22,995 lbs.	8	"	24 T
24 | 5 | 69		197	"	11 N
18) [G]	Acc't C. Grimshaw & Co.:			
	31 bales cotton	127	1	14
(P)	10 " "	37	3	1
	41	165	"	15 G
	18,495 lbs.	6	2	12 T
24 | 5 | 69		158	2	3 N
19) [N] H	Acc't J. H. Schroeder & Co.:			
	14 bales cotton	52	"	22
19) " B	22 " "	84	2	16
20) " C	32 " "	125	3	13
20) " D	3 " "	10	3	9
21) [G] D	21 " "	86	2	4
21) " B	12 " "	47	3	25
21) " A	2 " "	8	3	6
22) " C	40 " "	154	2	15
21) " F	15 " "	55	2	25
269				
22) " G	2 " "	7	3	23
22) " H	1 " "	4	1	"
24 | 5 | 69	164	639	1	18 G
	71,614 lbs.	25	2	9 T
		613	3	9 N
24) J [M]	Acc't L. & N. W. Railway Co.:			
	5 bales cotton	21	"	5 G
	2,357 lbs.	.....	3	10 T
24 | 5 | 69		20	"	23 N
23) H A M	Acc't Veeder & Co.:			
	50 bales cotton	205	1	14 G
	2,300 lbs.	8	"	24 T
25 | 5 | 69		197	"	18 W

Goods.	Consignees.	Weight. Cwt.	Qrs.	Lbs
24) E V E	Acc't S. Marshal Bully:			
	43 bales cotton	169	3	G
	19,012 lbs.	6	3	4 T
25 | 5 | 69		162	3	24 N
9)	Acc't Baring Bros. & Co.:			
S A L	99 bales cotton	396	1	3
') V O X	66 " "	271	"	3
	165	667	1	6 G
	74,738 lbs.	26	2	22 T
24 | 5 | 69		640	2	12 N
9)	Acc't James Finlay & Co.:			
S A L	21 bales cotton	85	1	16
") V O X	14 " "	54	1	21
	35 bales	139	3	9 G
	15,661 lbs.	5	2	10 T
24 | 5 | 69		134	"	27 W

270 EXHIBIT G.

At the execution of a commission for the examination of witnesses, between Henry Hentz et al., libellants, and the Steamer Idaho, the Liverpool and New York Great Western Steamship Co., claimants, this paper-writing was produced and shown to the witness, Samuel Smith, and by him deposed unto at the time of his examination before me.

SAMUEL SMITH.

H. M. WING, *Commissioner.*

[Canceled stamp.]

GUION & CO., Agents, Liverpool.

WILLIAMS & GUION, Agt's, 71 Wall street.

Shipped in good order and well-conditioned, by Thomas W. Mann, in and upon the steamship called Idaho, whereof is master for this present voyage, or whoever else may go as master in the said vessel, and now lying in the port of New York, and bound for Liverpool, via Queenstown, two hundred bales cotton, being marked and numbered as in the margin; and are to be delivered from the ship's deck, where the ship's responsibility shall cease, in like good order and condition, at the aforesaid port of Liverpool, (the act of God, the Queen's enemies, pirates, robbers, thieves, vermin, barratry of master and mariners, restraints of princes and rulers, loss or damage arising from insufficiency in strength of packages, from sweating, leakage, breakage, or from stowage or contact with other goods, or from any of the following perils, (whether arising from the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew, or otherwise, however, excepted,) namely: Risk of craft, explosion or fire at sea, in craft or on shore, boilers, steam, or machinery, or from the consequence of any damage or injury thereto, howsoever such damage or injury may be caused; collision, stranding, or other perils of the seas, rivers, or navigation of whatever nature or kind soever, and howsoever such collision, stranding, or other peril may be caused, with liberty, in the event of the said steamer putting back to

S A L—120
V O X— 80
200 bales.
89,736 lbs.

New York, or into any other port, or otherwise being prevented,
271 from any cause, from proceeding in the ordinary course of her voyage, to tran'ship the goods by any other steamer, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations unto order, or to assigns, freight for the said goods being paid immediately on landing, without any allowance of credit or discount, at the rate of five shillings sterling per bale, gross weight, delivered, with primage and average accustomed. In witness whereof the master or agents of the said ship hath affirmed to three bills of lading, all of this tenor and date, one of which bills being accomplished, the others to stand void.

Weight, measures, contents, quality, brand and value unknown. The goods to be taken from alongside by the consignee, immediately the vessel is ready to discharge, or otherwise they may be landed and warehoused at his risk and expense. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship. The master-porterage of the delivery of the cargo to be done by the consignees of the ship, and the expense thereof to be paid by the receivers of cargo. The owners of the ship will not be responsible for money, documents, gold, silver, bullion, specie, jewelry, precious stones or metals, paintings and statuary, unless bills of lading are signed therefor and the value thereof therein expressed.

...at....per ton, £..
Primage.
.....
Total, £

In accepting this bill of lading, the shipper or other agent of the owners of the property carried expressly accepts and agrees to all its stipulation, exceptions, and conditions, whether written or printed.

For the agents.

W. ROYCE ALLEN.

Dated in New York, 4 May, 1869.

(Indorsed:) Deliver the within to the order of James Finlay & Co., of Liverpool.

THOS. W. MANN.

272 THOMAS M. SMITH recalled by claimants.

I gave receipts for cargo at the Ladona; they do not come back to the ship; I have now recollected that a man came down on the levee and marked the 165 bales as it lay on the levee; I remember it because it was unusual to see cotton marked on the levee; it was usually marked before it came down.

Cross-examination:

I didn't know the man; I can't say that he marked the whole; I can't give the hour the cotton came down; the Ladona received cargo as long as we could see to distinguish marks—probably not later than 7 p. m.; I think all this cotton came at once—one day; bills of lading were given at the office; I don't remember the date it was received; the vessel sailed on the 10th of April; before the cotton was all down this man came down, and brought a marking pot and brush, and marked—I can't say how much; I don't remember this man's asking permission to mark this cargo; the receipts I gave the carman always contained the shipper's mark, and were given to the drayman as the cotton arrived.

Libellants then read from Liverpool commission the following depositions:

Deposition of Samuel Smith.

First interrogatory. Q. What is your name, age, residence, and occupation; and what was your occupation in the months of May and June, 1869?

A. Samuel Smith; 34 years; at Woodlands, New Brighton; I am a merchant, and resident partner in Liverpool of the firm of James Finlay & Co.; I was the same in the months of May and June, 1869.

Second. Q. Did you in the month of May, 1869, receive a bill
273. lading for any cotton per steamer Idaho from New York? If so, state from whom you received the bill lading, and when. How many bales did the bill lading call for? By whom was the cotton shipped in the bill lading? Where is that bill lading now? If it is in court, have a certified copy of it taken by the proper officer of the court and annex it hereto. What were the shipping-marks of that cotton? How many bales of each? How many bales of cotton were delivered to you by the steamer Idaho under that bill lading? What became of the balance of the cotton called for by your bill lading? In the delivery to you, by the steamer Idaho, of what cotton they did, if 35 bales, state the number of bales of each shipping-mark that was delivered to you; was this cotton delivered to you promiscuously from the vessel? Was there any distinguishing mark or appearance in the 35 bales to distinguish them from the balance of the 200 bales per Idaho? If so, state it.

A. Yes, I did; I received it from H. Hentz & Co., New York, on the 17th of May, 1869; it called for 200 bales, by Thomas W. Mann; it is in my possession, and I now produce it and annex it hereto, marked G; 120 bales were marked S A L and 80 bales V O X; 35 bales; the agents of the ship refused to deliver them to me, and I believe delivered them to Baring Brothers & Co.; of the 35 bales delivered to me, 21 bales were marked S A L and 14 V O X; from the marks on the 35 bales and the marks on the balance, I believe the cotton delivered to me was promiscuously taken from the vessel; there was no distinguishing mark or appearance on the 35 bales to distinguish them as a whole from the balance of the 200.

Third Q. Did you have an examination made of the 165 bales not delivered to you, so as to ascertain the marks? If so, by whom was that examination made?

A. I did; it was made by George Carter and William Jolly.

Fourth Q. Did you, in May, 1869, make an examination of a
274 lot of cotton, containing 165 bales, landed at Liverpool, England, from the steamship Idaho, from New York? If yes, state when the examination was made, and at whose request, and where was it made, and what was the nature and extent of that examination.

A. I did not make the examination myself.

Fifth Q. In whose possession was the cotton so examined at the time of its examination, and when and where did you first see the cotton? And what do you know, if anything, as to its arrival in England, and in whose possession and where it had been from the time of its arrival till the time of your examination of it?

A. Of my own knowledge I am unable to answer.

Sixth Q. Did you or not make a search for and ascertain all the marks, figures, on the said bales of cotton? Did you also take any notice, and if so, what, of the condition of the covering of said bales?

A. I did not see the 165 bales.

Seventh Q. Please state fully, and in detail, all the marks and figures on each of said bales of cotton; and also the condition of the covering of

each bale, and whether or not the covering had been in part cut away and repaired, and generally all that you observed as to its condition.

A. I did not see the 165 bales.

Eighth Q. Do you know any other matter or thing that may tend to the advantage of the libellants in this suit? If yea, declare the same fully, as if thereunto specially interrogated.

A. I do not remember any other matter or thing that may tend to the advantage of the libellants in this suit.

First cross-q. If, in response to the second direct interrogatory, you produce and annex a copy of the bill of lading referred to therein,
275 then annex also a copy of all the indorsements on said bill of lading, and state that the copy of indorsements so produced and annexed by you is a full and true copy of all the indorsements thereon.

A. I have produced and annexed the original bill of lading, with all the indorsements thereon, with my answer to the second interrogatory-in-chief.

Second cross-q. Have your firm of James Finlay & Co. commenced any action against the Liverpool and Great Western Steamship Company (limited) upon a cause of action growing in any way out of the failure of the agents, officers, or owners of the said steamship Idaho to deliver to your said firm some part of the cotton described in said bill of lading, or upon any cause of action. If yes, state when said action was commenced, and in what court, and whether or not the same is now pending, and upon what cause of action said action is brought. Please procure from the proper officer of the court in which said action is pending a certified copy of the pleadings therein, and annex them to your deposition.

A. Yes; in May, 1869; in the court of exchequer of pleas; it is; for non-delivery of 165 bales cotton according to bill of lading. I am unable to procure a copy certified by the officer of the court, because the proceedings are not yet filed, but I produce a copy certified by the solicitors on both sides, and annex it hereto, marked "H."

First redirect Q. Have you given instructions to your solicitors or attorneys to stay the proceedings in the case of James Finlay & Co. against the Liverpool and Great Western Steamship Company (limited) until the decision of the United States court has been rendered?

A. Yes.

Second redirect Q. Has any decision or ruling been made in that action of Finlay against the Liverpool and Great Western Steam-
276 ship Company (limited) with reference to the rights of Finlay & Co.? If so, please annex a certified copy of said decision or ruling to your answer hereto.

A. No final decision or ruling has been made, but an interlocutory decision upon demurrer as to the validity of certain pleas has been made, and I produce a certified copy and annex it hereto, marked "I."

First cross-q. Did you make an examination of any of the bales of cotton landed from the steamship Idaho in Liverpool in May, 1869, besides the 165 bales to which you testify in reply to the fourth direct interrogatory? If yes, state how many of such other bales you examined, when you examined them, at whose request, where they were, and in whose possession, when the examination was made, and where they had been and in whose possession, if you know, from the time of the landing thereof until the time of such examination; and state the nature and extent of such examination.

A. I looked generally at the 35 bales delivered to us, but left the minute examination to the man deputed for that purpose, George Lyon;

they were in the warehouse, in my possession; they had been in our possession from the time they were delivered to us by the ship. I have stated that the examination was general.

Second cross-q. If in answer to the first cross-interrogatory you state that you made such examination of any of such other bales, then state in detail all the marks and figures that you found thereon, and designate, as far as you are able, the part of the bale on which the marks and figures testified to by you were; and describe the size and nature of the marks as fully as you are able; and state whether or not you made a memorandum at the time of such examination of such marks and figures. If yes, please annex it to your answer. If you decline to annex the original, state the reason why you decline to do so, and annex a copy.

277 A. I made no such memorandum, and am unable, of my own knowledge, to depose to the matters inquired of.

Third cross-q. Did you weigh or note the weight of such other bales? If yes, give the weight of each bale, designating the bale by its marks, if any, and state whether you weighed it, or how otherwise you ascertained the weight.

A. I am unable, of my own knowledge, to depose to the matters inquired of.

Fourth cross-q. Have you, in answer to the second cross-interrogatory, given all the marks and figures of every kind that you saw on each of the bales of cotton in said interrogatory referred to? If not, give the same now fully and in detail.

A. I am unable, of my own knowledge, to depose to the matters inquired of.

SAMUEL SMITH.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, at Liverpool, this 25th day of November, 1870, before me.

S. M. WILDING,
Commissioner.

Deposition of William Jolly.

First interrogatory: Q. What is your name, age, residence, and occupation, and what was your occupation in the months of May and June, 1869?

A. William Jolly; age, 30 years; I reside at Liverpool, and am a brokers' clerk, in the employ of Messrs. Smith, Edwards & Co.; I was the same in May and June, 1869.

278 Fourth Q. Did you, in May, 1869, make an examination of a lot of cotton, containing 165 bales, landed at Liverpool, England, from the steamship Idaho, from New York? If yes, state when the examination was made, and at whose request, and where was it made, and what was the nature and extent of that examination.

A. Yes, I did; it was made at the request of James Finlay & Co., from the 19th to 21st May, 1869; it was made partly on the quay and partly in the warehouse at the London dock; we examined each bale separately, and made memorandums of their marks and numbers.

Fifth Q. In whose possession was the cotton so examined at the time of its examination, and when and where did you first see the cotton; and what do you know, if anything, as to its arrival in England, and in whose possession and where it had been from the time of its arrival till the time of your examination of it?

A. It was in possession of the master porters of the steamer Idaho; I saw it first on the 19th of May, 1869, in the Sanden dock; it arrived in the steamship Idaho; it had been in possession of the ship or the master porter, in the Sanden dock.

Sixth Q. Did you or not make a search for and ascertain all the marks and figures on the said bales of cotton? Did you also take any notice, and, if so, what, of the condition of the covering of said bales?

A. Yes, I did; I also took notice of the covering; I noticed that some of the bales were covered with what we call black canvas, that is, canvas of a dark color, made in America; the others were covered with Dundee canvas; the coverings were in a patched condition; some of the patches were new.

279 Seventh Q. Please state fully, and in detail, all the marks and figures on each of said bales of cotton, and also the condition of the covering of each bale; and whether or not the covering had been in part cut away and repaired, and, generally, all that you observed as to its condition.

A. I produce and annex hereto, marked "J," a list of the marks and figures on each bale. I have already stated that the coverings were in a patched condition, but I am unable to state how many coverings had new patches; nearly all the patches were new. The coverings of nearly all the bales had been in part cut away and repaired. I did not observe anything else.

Eighth Q. Do you know any other matter or thing that may tend to the advantage of the libellants in this suit? If yea, declare the same fully, as if thereunto specially interrogated.

A. I do not know of any other matter or thing that may tend to the advantage of the libellants.

First cross-q. Did you make an examination of any of the bales of cotton landed from the steamship Idaho, in Liverpool, in May, 1869, besides the 165 bales to which you testify in reply to the fourth direct interrogatory? If yes, state how many of such other bales you examined, when you examined them, at whose request, where they were, and in whose possession when the examination was made, and where they had been and in whose possession, if you know, from the time of the landing thereof until the time of such examination, and state the nature and extent of such examination.

A. I did; I examined 35 other bales. I examined them at the same time at the request of James Finlay & Co. They were in the Sanden dock, in possession of the master porter of the steamship Idaho. The examination was made from the 19th to the 21st of May, 1869. They had been in possession of the master porters of the Idaho. I examined each

280 bale, took the marks and numbers, and observed the condition. Second cross-q. If in answer to the first cross-interrogatory you state that you made such examination of any of such other bales, then state in detail all the marks and figures that you found thereon, and designate, as far as you are able, the part of the bale on which the marks and figures testified to by you were, and describe the size and nature of the marks as fully as you are able, and state whether or not you made a memorandum at the time of such examination of such marks and figures. If yes, please annex it to your answer. If you decline to annex the original, state the reason why you decline to do so, and annex a copy.

A. I annex hereto, marked "J 2," a list of the marks and figures on each bale. The marks and figures were on the bilge or broader sides of the bales, and on the ends. The letters would be about eight inches high;

they were in black ink, and I think put on with a brush. I did make a memorandum. The annexed hereto, marked "J 2," is a copy. I cannot annex the original, as it may be required here.

Third cross-q. Did you weigh or not, the weight of such other bales? If yes, give the weight of each bale, designating the bale by its marks, if any, and state whether you weighed it, or how otherwise you ascertained the weight.

A. I did not weigh them or note the weights.

Fourth cross-q. Have you, in answer to the second cross-interrogatory, given all the marks and figures of every kind that you saw on each of the bales of cotton in said interrogatory referred to? If not, give the same now fully and in detail.

A. I have.

(Signed) WILLIAM JOLLY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to at Liverpool, this 25th November, 1870, before me.

S. H. WILDING,
Commissioner.

281 EXHIBIT H.

In the exchequer of pleas.

BETWEEN JOHN FINLAY, ARCHIBALD BUCHANAN, ALEXANDER KAY, HUGH BROWNE MUIR, JOHN MUIR, and SAMUEL SMITH, plaintiffs,
and
THE LIVERPOOL AND GREAT WESTERN STEAMSHIP COMPANY, (limited,) defendants.

LANCASHIRE,
West Derby Division, to wit:

John Finlay, Archibald Buchanan, Alexander Kay, Hugh Browne Muir, John Muir, and Samuel Smith, by Charles John Allen, their attorney, sue the Liverpool and Great Western Steamship Company, (limited,) who have been summoned to answer the said plaintiffs, by virtue of a writ issued on the 31st day of May, in the year of our Lord 1869, out of Her Majesty's court of exchequer of pleas, for that Thomas W. Mann caused to be shipped and loaded at New York, upon a steamship called the Idaho, of which the defendants were then the owners, certain goods, to wit, bales of cotton; and thereupon the defendants, through their agents in New York, aforesaid, executed and delivered to the said Thomas W. Mann a bill of lading, made on the 4th day of May, in the year of our Lord 1869, and by the terms of the said bill of lading the said defendants promised the said Thomas W. Mann that the said goods of the said Thomas W. Mann so shipped as aforesaid should be carried to and delivered at Liverpool (certain perils and casualties only excepted) to the order of the said Thomas W. Mann, on pay-
282 ment of freight for the same, with primage and average accustomed, and the said Thomas W. Mann indorsed the said bill of lading to the plaintiffs, to whom the property in the said goods thereby passed; and the said goods in the said bill of lading mentioned were carried to and arrived in Liverpool, according to the tenor of the said bill of lading, and the plaintiffs then and still being the holders of the

said bill of lading, and entitled to the delivery of the said goods to themselves, as aforesaid, were ready and willing, and offered to pay freight for the carriage of the said goods, according to the tenor of the said bill of lading, and demanded delivery of the said goods, and all conditions were performed, and all things happened, and all times elapsed necessary to entitle the plaintiffs to have the said goods delivered to them at Liverpool; yet the said goods were not delivered to the plaintiffs, whereby the same were wholly lost to the plaintiffs; and the plaintiffs also sue the defendants for that the defendants converted to their own use, or wrongfully deprived the plaintiffs of the use and possession of the plaintiffs' goods, that is to say, bales of cotton.

And the plaintiffs claim £5,000.

Pleas.

The 5th day of August, in the year of our Lord 1869.

The defendants, by Edward Lee Rowcliffe, their attorney, for a plea to the first count, say that the said Thomas W. Mann did not cause to be shipped and loaded at New York, upon the said steamship Idaho, the said goods as alleged.

2. And for a further plea to the said count, the defendants say that they did not, through their said agents in New York, or in any other manner, execute and deliver to the said Thomas W. Mann the said bill of lading upon the said terms, as alleged.

3. And for a further plea to the first count, the defendants say that the said Thomas W. Mann did not indorse the said bill of lading to the plaintiffs, as alleged.

283 4. And for a further plea to the first count, the defendants say that the property in the said goods did not pass to the plaintiffs by the said indorsement, as alleged.

5. And for a further plea to the first count, the defendants say that the said goods in the said bill of lading mentioned were not carried to and did not arrive in Liverpool according to the tenor of the said bill of lading, as alleged.

6. And for a further plea to the first count, the defendants say that the plaintiffs were not, at the time of the said arrival of the said goods, in Liverpool, nor were they, at the time of the commencement of this suit, the holders of the said bill of lading, and entitled to the delivery of the said goods, as alleged.

7. And for a further plea to the first count, the defendants say that the plaintiffs were not ready and willing, nor did they offer to pay freight, according to the tenor of the said bill of lading, as alleged.

8. And for a plea to the second count, the defendants say that they are not guilty.

9. And for a further plea to the second count, the defendants say that the said goods were not, nor were any of them, the goods of the plaintiffs, as alleged.

10. And for a further plea to the said first count, the defendants say that the non-delivery to the plaintiffs in that count complained of was caused and occasioned by certain of the said perils in and by the said bill of lading excepted, as in the said first count mentioned, to wit, by the acts and restraints of princes and rulers.

11. And for a further plea, and to the said first count, and for a defence upon equitable grounds, the defendants say, as to the non-delivery of 165 bales of cotton, being part of the goods in the said first count mentioned, that such bales of cotton were shipped as in the said count

mentioned, and at the time of such shipment the possession of the said goods had been fraudulently obtained from the true owners thereof, and neither the property in the said goods, nor the right to the possession thereof, had passed from such true owners to any other person or
284 persons, and neither the said Thomas W. Mann or the plaintiffs, or any other person by, through, or for whom the plaintiffs claimed, acquired any right to or to the possession of the said goods, and the defendants, by the captain of the said ship not knowing the premises, received the said goods, as alleged, and executed and delivered the said bill of lading; and afterwards the true owners of the said goods gave notice to the defendants, by their said agent, of the premises, and such true owners thereupon claimed the possession and control of the said goods, and asserted their rights thereto and therein; and thereupon the defendants, by the directions and upon the claim of the said true owners, refused to deliver the said goods to the plaintiffs, or to any other persons than such true owners, or persons authorized by them to receive the same; and the defendants say that such refusal to deliver is the matter in the said first count complained of, and not otherwise.

12. And for a further plea, and to the said first count, and for a defence upon equitable grounds, the defendants, as to the non-delivery of 165 bales of cotton, being part of the goods in the said first count mentioned, say that such bales of cotton were shipped as in such count mentioned, and the said bill of lading provided, amongst other things, that the defendants should not be answerable for the non-delivery of the said goods, provided the delivery of the same were prevented by the acts or restraints of princes and rulers; and after the execution and delivery of the said bill of lading, and after the said shipment on board the said ship, to wit, at New York, certain persons claimed the property in and right to the possession of the said goods, and alleged that they had been fraudulently deprived of the possession of the said goods; and thereupon such persons proceeded, in due course of law, in the recognized and established judicial tribunals of the place, such tribunals having authority and jurisdiction in the premises, to enforce their claim to and to the possession of the said goods; and thereupon, all due and regular steps being taken, and all due and regular notices having been
285 given, the said judicial tribunals adjudged and determined that such alleged true owners were, in fact, the owners of the said goods, and entitled to the same, and to the possession thereof, as against all persons; and thereupon it was by the said judicial tribunals adjudged and determined that the defendants' agents, being then in possession of the said goods, should hold possession thereof for, and should deliver the same to, or to the order of, the said true owners. And that the defendants say that the said judgment, order, and determination were duly and regularly made, and were legally enforceable upon and against the said goods, and against the said defendants, and their said agent, and the said ship; and thereupon the defendants and their said agent, in obedience to the said judicial judgment, order, and determination, and for no other cause or reason, delivered the said goods to the order of the persons so adjudged to be the true owners thereof; and the defendants say that the non-delivery to the plaintiffs in the said first count complained of is the non-delivery of the said 165 bales, and not otherwise, and such non-delivery was caused and occasioned as in this plea mentioned, and not otherwise.

13. And for a further plea to the first count, and as a defence upon equitable grounds, the defendants say that the said goods, before and at the time of the alleged shipping and lading thereof on board the de-

fendants' steamship Idaho, were not the goods of the said Thomas W. Mann, nor had he any right, authority, or title so to ship or load them, and that he had obtained them by fraud from the real owner thereof, one William J. Porter, and that the said shipping or lading was without the consent of the said William J. Porter, and against his will, and was made by the said Thomas W. Mann by fraud, and with intent to defraud and deprive the said William J. Porter of the said goods; and the defendants were all along ignorant of the said fraud and of the premises. And the defendants say that the said bill of lading and the said promise of the defendants was obtained by the said Thomas W. Mann by fraud, and not otherwise, and that the said bill of lading
286 was fraudulently indorsed by the said Thomas W. Mann to the plaintiffs; and the defendants further say that, after the said goods were so shipped and loaded at New York, on the defendants' said ship Idaho, and before the said ship left New York, the said William J. Porter demanded the said goods from the defendants' agent in New York, that is to say, the master of the said ship, and sued the said master in the New York supreme court, city and county of New York, duly having jurisdiction in the said matters in that behalf, for the return and delivery of the said goods to him, the said William J. Porter And thereupon the master of the said ship was adjudged and compelled by law, and by the said supreme court duly having jurisdiction in that behalf, to deliver the said goods to the order of William J. Porter; and the said master then did accordingly deliver the said goods to the order of the said William J. Porter, and the said William J. Porter duly ordered the defendants, and their agents in that behalf, to deliver the said goods to certain other persons, not being the plaintiffs; and the defendants and their agents duly delivered the said goods accordingly to the order of the said William J. Porter, whereby they were prevented from delivering the same to the plaintiff.

Replication and demurrer.

The 29th day of November, in the year of our Lord 1869.

The plaintiffs take and join issue upon the defendants' several pleas and defences upon equitable grounds respectively.

And the plaintiffs further say that the defendants' twelfth and thirteenth pleas and defences, on equitable grounds, are, respectively, bad in substance.

A ground of demurrer to the said twelfth plea is that the facts therein alleged do not bring the case within the exception in the bill of lading; and a ground of demurrer to the thirteenth plea is that it is not
287 denied thereby that the plaintiffs became, and were and are bona-fide, holders for value of the bill of lading.

Joinder in demurrer.

The 9th day of December, in the year of our Lord 1869.

The defendants say that the said twelfth and thirteenth pleas are good in substance.

We certify the above to be a correct copy.

SIMPSON & NORTH,
Plaintiffs' Attorneys.

DUNCAN, HILL & PARKINSON,
Defendants' Attorneys.

At the execution of a commission for the examination of witnesses, between Henry Hentz et al., libellants, and the steamer Idaho, the Liverpool and New York Great Western Steamship Co., this paper writing was produced and shown to the witness, Samuel Smith, and by him deposed unto at the time of his examination before me.

SAMUEL SMITH.

H. M. WING,
Commissioner.

In the exchequer of pleas.

(Indorsed:) Finlay v. The Liverpool and Great Western Steamship Co. Copy pleadings. Simpson & North, Liverpool.

288 EXHIBIT I.

In the exchequer of pleas.

FINLAY AND OTHERS
against
THE LIVERPOOL & GREAT WESTERN STEAMship Company, (limited.)

WEDNESDAY, *the 27th day of April*, 1870.

Upon hearing Mr. Benjamin, of counsel for the plaintiffs, and Mr. Milward, of counsel for the defendants, it is ordered that judgment be entered for the plaintiffs on the demurrer to the twelfth plea, and for the defendants on the demurrer to the thirteenth plea in this cause.

By the court.

We certify the above to be a correct copy.

SIMPSON & NORTH,
Plaintiffs' Attorneys.
DUNCAN, HILL & PARKINSON,
Defendants' Attorneys.

At the execution of a commission for the examination of witnesses, between Henry Hentz et al., libellants, and the steamer Idaho, the Liverpool and New York Great Western Steamship Co., claimants, this paper writing was produced and shown to the witness, Samuel Smith, and by him deposed unto at the time of his examination before me.

SAMUEL SMITH.

H. M. WING,
Commissioner.

289 EXHIBIT J.

Memo. of marks of 165 bales cotton, ex. Idaho S. S. @ New York, the delivery of which to James Finlay & Co. was refused by the steamer's agents:

S A L, 99; V O X, 66=165 bales. Arrived 18th May, 1870.

S A L	(o)	S A L	MS
"	F S T J B	"	J C R
"	J B E	"	S A
"	W R S	"	J J P & Sons
"	J J P & Sons	"	H S S W
"	E S & R		J J P & Sons

"		R S B J J P & Sons	"		(o) N O
"		[A] (O)	"		O N O
"		(o)	"		J R
"		J & R	"		A L
"		J D E	"		B D
"		J D	"		J P E
"		W S S c	"		B D
"		J B	"		J D E
"		J R	"		J H
"		E S & J B	"		(o)
"		W L C	"		(o)
"		A L S	"		o
"		M S S	"		J R
"		R S B J J P & Sons	"		B D
"		R S B J J P & Sons	"		J T
"		[G]	"		(o) A
"		J R	"		S A J J P & Sons
"		M S S c	"		(o) N O
"		W S S c	"		J D E
"		(o) J J T	"		M S S c
"		W O	"		(o) J J T
	"	(o)	"		[A] (o)
290	S A L	S & R J J P & Sons W A S H			M S S c
			S A L		W A S H J J P & Sons
"		(o)	"		A L
"		(o) J T	"		B D
"		O R	"		(o) N O
"		J P			
			66 BfCo.		
V O X		F S B	V O X		V
"		J M	"		A L
"		F	"		A L
"		G N	"		[F]
"		V	"		J M
"		F	"		A L
"		F S B	"		B
"		G N	"		G N
"		F	"		F
"		B	"		V
"		B D	"		G N
"		F S B			
"		[F]	24 BtCo.		

The above represent 90 bales, and on the remaining 75 bales no marks could be found in addition to S A L and V O X.

At the execution of a commission for the examination of witnesses, between Henry Hentz et al., libellants, and the steamer Idaho, the Liverpool and New York Great Western Steamship Co., claimants, this paper writing was produced and shown to the witness, William Jolly, and by him deposed unto at the time of his examination before me.

WILLIAM JOLLY.

H. M. WING,
Commissioner.

291 EXHIBIT J 2.

Memo. of marks on 35 bales cotton, ex. Idaho S. S. @ New York, received by James Finlay & Co.; arrived 18th May, 1869.

"S A L," 21; "V O X," 14=35 bales.

	S A L	(O)	[O EC]	[R]	V O X	O
	"	[A]	(O)		"	O
	"	O E C		5 bls.	"	G N
	"	D D			"	O
	"	O			"	O
	"	L				
11 bls.	"	O				
	"	[L]				
	"	S & A To J J P & Sons, W A S H				
	"	S K				
	"	O				

The above represents 16 bales.

And on the remainder, viz, 19 bales, no marks were found in addition to S A L and V O X.

At the execution of a commission for the examination of witnesses, between Henry Hentz et al., libellants, and the steamship Idaho, The Liverpool and New York Great Western Steamship Co., claimants, this paper-writing was produced and shown to the witness, William Jolly, and by him deposed unto at the time of his examination before me.

WILLIAM JOLLY.
H. M. WING,
Commissioner.

EXHIBIT K.

At the execution of a commission for the examination of witnesses, between Henry Hentz et al., libellants, and the steamship Idaho,
292 the Liverpool and New York Great Western Steamship Co., claimants, this paper-writing was produced and shown to the witness, George Lyon, and by him deposed to at the time of his examination before me.

GEORGE LYON.
H. M. WING,
Commissioner.

EX. IDAHO.

S A L, 21 bales, sold to Comer & Harrison.

MAY 21, '69.

Gin marks.	Old.	T	W	S.	N		
	———	4	6	9	4	"	"
D D	———	5	20	3	3	15	
S & A	———	8	1	3	2	"	
To J J P & Son	———	17	2	4	"	"	

EX. IDAHO.

V O X, 14 bales, sold to John Milne, per Comer & Harrison.

MAY 21, '69.

Gin marks.	Sno.	M.				
	109	68	4	"	13	
	14	9	3	1	13	
O	13	70	4	"	15	
O	8	1	4	1	10	

O	19	3	3	3	8		7	2	4	"	15
[L]	7	4	3	3	"		6	3	3	1	20
O	9	5	4	"	13		9	4	3	2	25
L	10	6	4	"	9	G N	4	5	3	"	20
	16	7	4	2	13		12	6	4	"	13
S K	18	8	3	2	5		11	7	3	3	6
		39	1	7				38	1	10	
	15	629	4	1	3		59	78	3	3	16
	14	30	3	3	25	O	2	9	3	2	24
	13	1	4	"	26	O	3	80	3	2	20
	21	2	3	"	23	L	1	1	4	2	17
E	12	3	3	2	25						
O	11	4	3	3	3						
	6	5	3	2	"			15	3	21	
	1	6	4	2	2						
(O) [R] O E C	20	7	4	"	"						
	3	8	3	1	25						
[A] (O)	2	9	3	2	19		14 B|S	54	1	3	
		42	1	11							
	21 B|S	81	2	11							

1 lbs. allowed at scale. Bands agst Bands.

GEORGE LYON.

1 lbs. allowed at scale. Bands agst. Bands.

GEORGE LYON.

H. M. WING,
Commissioner.

293

MARCH 16, 1871.

Libellants introduce a bill of lading, May 4th, 1869, indorsed to James Finlay, Ex. "1."

Libellants offer bill of sale, Mann to H. Hentz & Co., of 200 bales cotton, per Idaho, May 3d, 1869, Ex. 2, and note of H. Hentz, May 3d, 1869, for $25,350.42, marked paid, Ex. "3."

ADOLPHUS C. SCHAEFER, being called and sworn for the libellants, says:

I am a member of the firm of Adolphus C. Schaefer & Co.; in the cotton business for 28 years. In April, 1869, I received from Duncan, Sherman & Co., cotton which came by the Ladona. (Shown bill of lading per Ladona, April 9th, Ex. 4.) This is the bill of lading of it, marked

weighing 71,900 lbs. This bill of lading was sent to me with a sight draft drawn on me by J. C. Forbes. The draft and bill of lading were attached together, and were presented to Duncan, Sherman & Co. between 12 and 1 o'clock on the morning of the day it was paid. I refused to pay the draft when presented, and the draft and bill of lading were returned to Duncan, Sherman & Co. about 2½ p. m. of same day. Duncan, Sherman & Co. sent for me to come to their office, and stated to me that they thought the bill of lading was all correct. I, however, declined to pay it still, unless they would guarantee the bill of lading. (Objec-

tion to evidence of guarantee.) They agreed to guarantee it, and then indorsed the bill of lading as their guarantee, as it shows. I then paid the draft. I afterwards sold that cotton to Thomas W. Mann, and I delivered it to Mr. Mann the first part of May.

I gave orders to Peter Corcoran to change the marks of this cotton. I directed him to remove the shipping marks and put on new. I told him to put on marks S A L and V O X. These were the marks on the 35 bales that I had sold to Mann, in addition to the 165, making the 200 bales.

294 I met Mr. Guion on the day the Idaho sailed. When I came down first in the morning I found Mr. Guion in my office. It was between 11 and 12 o'clock. I think Mr. Guion said a part of the cotton had been taken out of the vessel, and wanted to know where Mr. Mann was. I told him I thought he could find Mann in there about 1 p. m. Mr. Guion said he would come down again. He didn't come, and after waiting till half past 1, and Mr. Mann not making his appearance, I went to my lawyer's, Mr. Hammond, and told him about it.

I didn't know until after I saw Mr. Guion, and after the vessel sailed, to whom Mann had sold the bill of lading. You can't uncompress compressed cotton. That is never done until in manufactory. Mann has paid me for the cotton.

Cross-examination:

Mann was my clerk, and also operates on his own behalf. He is about 50 years old. His place of business was with me. He was there nearly every day—some part of the day. He oversaw the books.

The 35 bales were marked S A L, V O X in Augusta, Ga., the original shipper's marks. I told Corcoran to put the same marks that was on the 35 bales. I know it was Corcoran, because he came to my house to get the orders. I must have told him how many to mark S A L and V O X. I had had another lot of 200 bales, same marks. I wanted this lot to correspond. At the time this cotton came I knew of trouble about the cotton on the Colson. I was a sufferer, and held some of the bills by the Colson. I knew the Colson was short 800 or 1,000 bales of cotton. I didn't know Porter then. Before I received this cotton the newspapers contained articles about this fraud from New Orleans.

I had heard that Porter was in the same condition as we were as to the cotton alleged to have been shipped on the Colson. Cotton, if kept in store, will dry and lose weight, and if wet will gain. Allow-

295 ance is made of its weight by the weigher, on his estimate, from his experience, and he marks so much less.

Corcoran came to see me on Sunday night. I sent for him to give him the orders. Mr. Ketching was the person at Duncan, Sherman & Co.'s with whom I had the conversation about the guarantee. I think Mr. Sherman indorsed the bill of lading. I had not then heard of the trouble about the Colson. I saw Mr. Kitching but once; at this time when he sent for me.

The reason why I asked for guarantee was because I had no advice of such a shipment or draft, and also because I thought the bill of lading didn't look right. Forbes was not authorized to draw on me. I previously received bill of lading from Thompson of shipment per Colson; there was nothing on the face of the bill of lading suspicious, but I imagined it didn't look right in the way it was sent, without advices.

I can't tell when Mann paid me for the cotton; he gave me Hentz & Co.'s note, and I gave him a check for the difference; this was three or four days after the sale was made, I suppose. I gave Mann a bill of

the cotton the 2d or 3d of May. I didn't give him the bill till Monday, 3d of May, certainly. I had the shipping-marks changed to avoid legal trouble, as I suspected somebody might claim it. I knew it was my cotton. It was between 11 and 12 a. m. the day the vessel sailed; that was the first I heard that the cotton was taken. I waited for Mr. Mann to come in, and didn't do anything till after 1½ o'clock. I didn't know where to find Mann; the clerk said he would be in about 1. I think Guion said it was taken by the sheriff; he may have mentioned the plaintiff's name, but I wouldn't be sure as to that. I couldn't do anything in regard to it. I told him, and said he would have to see Mann; nothing definite asked me heretofore. I didn't know where to find Mann.

Redirect:

Mann was an old cotton-merchant; he made $1.10 a bale on the sale to Hentz & Co. of this cotton.

296 EDGAR S. BLACKWELL, being called and sworn for libellants' says:

I am clerk of Schaefer & Co. I saw samples of the cotton that came to them from Duncan, Sherman & Co., per Ladona. I am a judge of the quality of cotton; it was not all the same cotton; the whole lot was what we call Liverpool low middling; that was what I classed it; in New Orleans it would have been classed as low middlings; New Orleans low middlings and Liverpool low middlings are the same.

Cross-examination:

I only knew the samples from the marks on the paper. I didn't draw the samples. I think I saw a few bales as it was coming out of the Ladona. I thought it was Kentucky bagging as it came out; it was in very bad condition; what I saw—ten bales, say—was in bad order; bagging was torn in shreds.

Testimony closed, except as to evidence of Mr. Kitching and Sherman, as to guarantee proved by Mr. Schaefer, which is to be submitted in deposition.

United States district court for the southern district of New York.

HENRY HENTZ AND OTHERS }
vs.
THE STEAMSHIP IDAHO. }

MARCH 25, 1871.

Examination of Mr. FRANCIS H. GRAIN, by consent, before T. J. Macvey, notary public.

297 By Mr. Choate:

Q. You are a member of the firm of Duncan, Sherman & Co., of this city?

A. Yes, sir.

Q. Were you a member of that firm during the year '69?

A. Yes, sir.

Q. Please look at bill of lading now shown you, marked "Exhibit 3," and state whether the signature of Duncan, Sherman & Co. is in your handwriting.

A. Yes, sir.

Q. Please look at the drafts for $7,000 and $10,000, now shown you, which purport to be against the shipment of 165 bales by the Ladona,

and state whether you can find your handwriting upon any indorsement or memorandums.

A. Upon the draft for $7,000 I find my handwriting.

Q. Will you state all that you remember with regard to the circumstances of your indorsing that bill of lading of Duncan, Sherman & Co.?

A. The bill of lading was brought to me, with request by one of the clerks in the office—whom I don't recollect—that I should indorse it. Being an unusual request, I asked the reason of the request; he stated that Mr. Kitching could inform me, who was then out. Upon Mr. Kitching's return the bill of lading was again brought to me, and Mr. Kitching stated that the firm of A. C. Schaefer & Co. wished the bill of lading to be indorsed, in order that it might be connected with the drafts, which were in separate amounts, and drawn against the same bill of lading; and that is all I recollect.

Q. Thereupon you indorsed it and handed it back to Mr. Kitching.

A. Yes, sir; having in the first instance withheld my signature until that explanation was made.

Q. Did you ever see Schaefer about it?

A. No.

Q. Or his partner, Mr. Barker?

A. No.

298 Q. That is all you know with regard to this indorsement?

A. Yes, sir.

Q. What is there on the draft which is in your handwriting?

A. The indorsement, "Duncan, Sherman & Co." I should perhaps amend it by saying that I don't recollect seeing either Schaefer or Barker. Mr. Barker was an unknown person to me.

Q. Were you ever requested to sign that for the purpose of guaranteeing the bill of lading?

(Objected to. Taken subject.)

A. No.

Q. By anybody?

A. No.

Q. About the indorsement of the bill of lading, do you remember whether the bill of lading indorsed by you was indorsed at the same time with the draft, or at different times?

A. Couldn't say whether I withheld the indorsement to the draft; of course I could only state an impression. I don't remember about the indorsement.

Cross-examination.

By Mr. Pomeroy:

Q. Were both of these drafts paid by Schaefer & Co. to your firm?

A. I presume so; they were paid by somebody; I don't know anybody else who paid them.

Q. Do you remember that which you have stated from your positive recollection of the fact, or from what you have heard since?

A. From my own recollection.

Q. What position does Mr. Kitching hold in your firm?

A. He has charge of everything connected with merchandise.

299 Q. Is he a member of the firm?

A. No.

Q. Was he at that time, in '69?

A. No.

Q. Do you remember all that was said to you by Mr. Kitching when he spoke to you concerning the indorsement of this draft?

A. No, sir.

Q. There might have been said something more or less than you have testified to?

A. Something that did not imply a guarantee for that I withheld.

Q. Was there anything said between Kitching and yourself concerning a guarantee?

A. No.

Q. There was nothing said?

A. No; not that I recollect.

Q. When you indorse transit bills of lading, do you not consider that you are guaranteeing the bill of lading?

A. No; I always inquire for what purpose the indorsement is asked.

Q. Are you in the habit of indorsing bills of lading of merchandise?

A. Occasionally.

Q. What is the usual object of so indorsing them?

A. The ship's agents sometimes request the indorsement in order that they may ascertain to whom the cotton was delivered.

Q. Does the payee of drafts which come by the bills of lading not frequently request that the bill of lading shall be indorsed?

A. Not frequently.

Q. Sometimes?

A. Occasionally.

Q. In that case, what is the usual reason for it?

A. I can only recollect one case; the reason was a trivial one, and it was unimportant; the indorsement was given. I can't recollect the exact reason, but it was a trivial one.

300 Q. Is it not unusual for your firm to indorse any bills of lading—very unusual?

A. Yes; and therefore that was the reason I withheld it in this case.

Q. Mr. Kitching is a clerk in your employ?

A. Hardly that; he is in a confidential position in our firm.

Q. Is he interested at all in any of the business?

A. No.

Q. Has he no interest over and above his salary?

A. No; when I said that he had none, I would say that he had a contingent interest in the merchandise department.

FRANCIS H. GRAIN.

JOHN B. KITCHING, sworn, testified.

By Mr. Choate:

Q. Where do you reside?

A. Dobbs' Ferry.

Q. You are in business with Duncan, Sherman & Co., of this city?

A. Yes, sir.

Q. You were so during the year '69?

A. Yes, sir.

Q. What department of the business did you have?

A. Merchandise department.

Q. Do the drafts upon bills of lading and bills of lading which are forwarded for collection pass through your hands?

A. Never except in extraordinary cases; that is, if there is nothing irregular about them. If they are paid, if there is any doubt about covering security, and drafts going forward to Europe, they are sent to me; but ordinarily they do not.

Q. Will you look at the bill of lading now shown you (Ex. 3) and state what you recollect, if anything, of any conversation with Mr. Adolphus C. Schaefer as to the bill of lading or the drafts accompanying it?

301 A. I recollect the circumstance of Schaefer sitting in my office waiting for me one day, and when I came in he said, "I have been waiting here a good while for you. I have paid, or am desirous of paying, your people two drafts to-day against one bill of lading here; here it is, and they refuse to indorse it." I said, "Very well; what is it?" I looked at it, and I said, "Here is a bill of lading that comes with two drafts, as you state, from parties in whom we have no interest whatever; the drafts are sent here for collection, and it would be quite out of course for our people to indorse them; they never do any such thing." He said, "I wish to identify the bill of lading with the two drafts; they have made two drafts against the same bill of lading." Schaefer done a large business with us, and I said, "If that is all, we won't object." I took it into Mr. Grain's and made a similar statement; he said it was all right, and indorsed it. I took it back, and he went away with it; that is all I remember about it.

Q. Did he say anything to you about a guarantee of the shipment or a guarantee of the shipper?

A. He did not. I am very clear upon that point, or I should not have taken it into the other room. I should have known very well it would not be indorsed.

Q. From whom did Duncan, Sherman & Co. receive these bills of lading?

A. From the firm of Wheliss & Pratt, for collection; they done some business with us.

Q. Did Schaefer state to you anything to this effect, that he declined to pay the draft or drafts unless Duncan, Sherman & Co. would guarantee the bill of lading?

A. I have no recollection of any such thing; my impression is that he said he had paid the drafts, or was desirous of paying them.

Q. Are you able to state whether he did say anything to that effect?

A. Could not swear positively, but that is the impression made upon my mind.

302 Q. Are you able to swear that he did not state to that effect; that he declined to pay unless it was guaranteed?

A. I am able to swear that he didn't make any such statement to me. I am very clear as to the request of the indorsing of the draft.

Cross-examination.

By Mr. Pomeroy:

Q. Who takes out the drafts and presents them?

A. The porters.

Q. Do you know whether the draft was presented in the morning to Schaefer & Co.?

A. I don't know, because I had nothing to do with the draft at all.

Q. Do you know whether Duncan, Sherman & Co. sent for Schaefer some time during the day?

A. No, sir; I have no knowledge of that. My only knowledge of the fact is what I stated.

Q. Did not Schaefer state to you, when he came there to see you, that the drafts had been presented to him, and that he had refused to pay them?

A. No.

Q. Did not he state to you, at that time, that he came up there for the purpose of arranging concerning those drafts and having the bill of lading indorsed?

A. No.

Q. Do not you know, of your own knowledge, this fact, that Duncan, Sherman & Co. did send those to Schaefer & Co., and that Schaefer refused to pay them, because they had no advices as to the drafts, and that some member of the firm of Duncan, Sherman & Co., or some of their clerks, went to Schaefer's, at the request of some member of the firm of Duncan, Sherman & Co., to have them come there concerning those drafts?

A. No, sir; I could not, by any possibility, recollect such a thing.

Q. Did you ever hear such a thing as that from any person in the employ or with Duncan, Sherman & Co.?

303 A. No, sir; that would never have been brought to me at all, had it occurred even.

Q. Do you remember Schaefer's saying to you on that occasion that he had refused to pay the drafts because he had no advices as to the shipment?

A. No, sir; I have no such recollection.

Q. Have you, since that occasion, had any conversation with A. C. Schaefer, of the firm of A. C. Schaefer & Co.?

A. Have I since that occasion on this subject?

Q. Yes.

A. Mr. Schaefer has said to me two or three times since the suit commenced, "No matter whether you gain the suit or not, and get the whole of this money, we shall turn around and sue you and recover it back, because we have got the indorsement on the bill of lading."

Q. What did you say in reply to that?

A. I said, "If you have a good claim against Duncan, Sherman & Co., they are good for the amount."

Q. Did you ever say anything to him more than that?

A. No, sir; I recollect saying that distinctly to Schaefer.

Q. At the time of this conversation, when the indorsement was made, do you remember saying to Schaefer words to this effect: "I know that this bill of lading is all right, because I have had drafts against bills of lading, or a bill of lading, for 5 or 600 bales of cotton, or more, from the same party?"

A. No, sir.

Q. Do not remember any such conversation?

A. I do not. I think if Schaefer recollects anything of the kind, he is blending a conversation on a different topic. I remember distinctly when this was done, I was in a very great hurry; there was no time for talk; there was no conversation of any length; that I am clear about, perfectly.

By Mr. Choate:

Q. Do you remembar whether it was the same day or a different day when the bills of exchange were paid?

A. I don't know.

304 By Mr. Pomeroy:

Q. Who is Mr. Beilinger?

A. He was a clerk in the office at that time, and he is now in New Orleans.

Q. What hour of the day was this?

A. I could not swear to the hour; very nearly 3 o'clock. It is my habit to come to the office, set my day's work a-going early in the morning, write important letters, that cannot wait, early in the day; then, at 11½ or 12, go down in the cotton market, and spend some two or three hours there, and don't get back till after bank closes; it was very nearly 3 o'clock.

By Mr. Choate:

Q. Are the two papers now shown you the drafts to which you have referred?

A. Yes, sir.

(Two drafts marked "Exhibits 7 and 8.")

Adjourned.

District court of the United States for the eastern district of New York.

HENRY HENTZ ET AL.
vs.
THE STEAMSHIP IDAHO.

Mr. KITCHING, on reading over his testimony, testifies further:

I am clear in my recollection on one point. I state, in addition to what I have testified to, in the conversation at the time of the in-
305 dorsement of the draft, that Mr. Schaefer said he had no advice of these drafts, but that it would come along, no doubt, in due course, it often happening that drafts come before advices. He observed that the indorsement of Waddy Thompson was on the drafts, but they were not upon the bills of lading, and for that reason he wished the indorsement of Duncan, Sherman & Co., to identify the two. I recollect nothing further.

(Signed) JOHN B. KITCHING.

JOHN B. KITCHING further testified:

I have heard Mr. Schaefer's testimony, given this day, in this case. I did not state to Mr. Schaefer that I knew the shipment would be all right. I may have stated that Duncan, Sherman & Co. had had bills of lading, through one of our clients, Mr. Porter, from the same parties, shipped to Liverpool. When I first went into the office and saw Mr. Schaefer, he said either that he had paid or was desirous of paying the drafts. I think my previous statement, at the commencement of my examination, was taken down wrong, and I have corrected it.

JOHN B. KITCHING.

Dated April 3, 1871.

United States district court, eastern district of New York.

HENRY HENTZ ET AL.
against
THE STEAMSHIP IDAHO.

ADOLPHUS C. SCHAEFER, sworn, testified as follows:

I would not have paid these drafts if Duncan, Sherman & Co. had not indorsed the bills of lading. I unquestionably did not pay these
306 drafts before the bill of lading was indorsed. The bills of lading were in my possession before the drafts were paid, handed to me by Mr. Kitching. I had not paid the drafts when I went to Mr. Kitching to get the bills of lading indorsed, and I did not tell Mr. Kitching that I had paid them. The indorsement of Duncan, Sherman & Co. on the bill of lading would in no way connect the drafts with the bill of lading. No conversation took place between myself and Kitching with

reference to connecting the bills of lading with the drafts or draft with the bills of lading. The drafts Exhibits 7 and 8 connect themselves on their face with the bills of lading, by stating that they are against "Ship't 165 bls. per Ladona." Waddy Thompson's name was never mentioned in that conversation between myself and Mr. Kitching, and nothing whatever was said about connecting the bills of lading and drafts on that account. Mr. Kitching stated to me he knew the shipment would be all right, as he had bills of lading for 500 or 600 bales from the same party. It is not customary for merchants to indorse bills of lading. If they wish to guarantee, they indorse; if not, they don't. Bills of lading are frequently indorsed without recourse. If these bills of lading had been indorsed "without recourse, Duncan, Sherman & Co.," I would not have paid the drafts. The conversation at Duncan, Sherman & Co.'s with Mr. Kitching was about 2 o'clock. I was there about a half hour with him. I had no conversation on that day outside Duncan, Sherman & Co.'s with Mr. Kitching. Mr. Kitching used no further arguments than I have stated to induce me to pay the drafts. I have had conversations with Mr. Kitching since; nothing on this subject, except I have said they, Duncan, Sherman & Co., were liable. Mr. Kitching has told me that Mr. Porter had settled with Duncan, Sherman & Co. My profit on the 165 bales of cotton would not have been over $250.

Cross-examined by Mr. Choate:

All the parts of the bill of lading that came to me came through
307 Duncan, Sherman & Co. I can't say if more than one came. Where one is indorsed it is not usual to indorse the whole set. I got advice of the shipment from Forbes the day I paid the drafts after 5 o'clock, or the next day. I never got an invoice of this cotton. I never knew of a case where a bill of lading was indorsed "without recourse" to avoid the liability for freight. I took the bill of lading to the office, after it was indorsed, before I sent up the check. I can't recollect whether Mr. Kitching said they had or that they had had some 500 or 600 bales from the same party. He didn't mention Mr. Porter's name in that connection. Never had any talk with Mr. Kitching before this one about shipments by Forbes. I had some talk with him about them after the cotton frauds came out. I found Mr. Kitching there when I went in; Beilinger was there; nobody there on business except the clerks. I recollect the time of this conversation particularly, because I had an important engagement just before then, and I had to make my arrangements to be there at two. The conversation with Mr. Kitching was a half hour, but this matter took a few minutes.

ADOLPHUS C. SCHAEFER.

Dated April 3, 1871.

United States district court for the eastern district of New York.

HENRY HENTZ ET AL.
against
THE STEAMSHIP IDAHO.

Examination of Edgar S. Blackwell, taken by consent, and to be used in the above action.

EDGAR S. BLACKWELL, sworn, says:

My name is Edgar S. Blackwell. I am the same Mr. Blackwell
308 who was sworn and testified on the trial of this action. I was

clerk with A. C. Schaefer & Co., of this city, in April, 1869. I remember the fact that two drafts, one for $7,000 and one for $10,000, drawn against shipment of 165 bales of cotton, per Ladona, (exhibits 7 and 8,) which came through Duncan, Sherman & Co., being presented to A. C. Schaefer & Co. in the morning, April 13, 1869. Exhibits 7 and 8 I identify as those drafts. A. C. Schaefer & Co. refused payment of them when presented, and they were sent back to Duncan, Sherman & Co. There had been no advice of the drafts at that time. I heard conversation between Mr. Barker and Mr. Schaefer, in which they said they would not pay the draft unless Duncan, Sherman & Co. would indorse the bill of lading. (Objected to.) I don't remember anything but the refusal to pay being said to the messenger of Duncan, Sherman & Co. Some member of A. C. Schaefer & Co. went up to Duncan, Sherman & Co. Up to that time the drafts had not been paid. The result of this interview was that, after the return of that member of the firm, I presented the check (Exhibit 9, W. G. C.) for $17,000 on the Bank of the Republic, certified, I think, at that time, to the paying-teller of Duncan, Sherman & Co., at their office, and received the drafts. I do not recollect whether I received the bill of lading when I paid the drafts, or whether one of the firm had it before. I remember the fact that one of the firm of A. C. Schaefer & Co. went to Duncan, Sherman & Co. before the drafts were paid. I think the result of that member of the firm going to Duncan, Sherman & Co. was the order to me to take the check up and pay the drafts.

Cross-examined:

I generally attended then to receiving and delivering cotton and outdoor work for A. C. Schaefer & Co. I was in the office when the messenger came. I think Mr. Schaefer was alone there and spoke to the messenger. Mr. Isaac B. Crowell, I think, was in the office at the time; I am not sure. I don't think any one else was present. On reflection, I know Crowell was not in, having left the year before.

309 Crowell's address I do not know; will find out and give it to you.

Lewis F. Fallon, a present clerk of the firm, might have been present, though I don't remember it, and there was a Mr. Lowe, or Rowe. A boy could have been present, but I don't remember that he was. I was frequently at that time in the habit of going to the office of Duncan, Sherman & Co.—two or three times a week, I should think. I don't think I knew the collectors of Duncan, Sherman & Co. I think I have learned since that he was a colored man, but I have no distinct recollection of him at the time. I must have heard the conversation between Schaefer and the messenger. I remember only that part in which Mr. Schaefer stated that they had no advices of the shipments or the drafts, and that that party had no authority to draw, and the drafts would not be paid. I knew the fact that no advices had been received of the draft. I am sure and positive that no advices were received until after the payment of the drafts. I think the advices were received late in the afternoon of that day. I think those advices were from Waddy Thompson. He had not been the correspondent of Schaefer & Co. until the shipment of 121 bales of cotton by Colson, which was a few days before this occurrence. The messenger went out after this presentation, and then followed the conversation with Schaefer and Barker, as detailed, in the office. I am confident Mr. Schaefer did not tell the messenger to leave the drafts with us; I am sure he did not say to leave them, and he would go up and see about them, or send a check. The conversation between Barker and Schaefer was, say, an hour afterwards. I don't remember

particularly all the conversation; I was doing something else in the office, and did not pay particular attention. The next thing I remember was some one of the firm going to Duncan, Sherman & Co.; am not sure which. I know he went, because he said he was going, and when he came back he said he had been. Can't remember distinctly the time of day; it was certainly after 12 o'clock. I think it must have been immediately after this that I was ordered to take the check and pay
310 the drafts; it may have been some minutes after. The check signature is that of Barker, the body that of Mr. Mann. I don't remember the length of time the member of the firm was gone, or whether he went with me. I distinctly remember paying the drafts. A member of the firm of A. C. Schaefer & Co. might have been at Duncan, Sherman & Co.'s when I paid the drafts, but I don't remember it. I don't remember seeing Mr. Kitching. I don't think I went up into the cotton-room at all; think I went straight to the paying-teller, the man who usually holds the drafts and receives pay for them. I have no distinct recollection of seeing the bill of lading by Ladona on that day; don't recollect anything being said by Schaefer to messenger about his not knowing whether this came from Mr. Thompson; remember taking up the drafts when I gave the check; don't remember if I had to wait some time; don't think the conversation between Barker and Schaefer was a long one. I don't recollect if I was there when Barker came in, though my impression is I was. I think I heard him tell him about the circumstances when he came; remember no more of it than I have stated. I don't remember anything more than this: that it would not be paid until the bill of lading was indorsed. I don't recollect if invoice came with advices. My impression is there was only a letter advising the shipment and the drafts. I have never seen any invoice. I generally receive the invoices and enter them on my book. I think the letter was from Waddy Thompson; am quite sure.

E. S. BLACKWELL.

311 CLAIMANT'S EXHIBIT A.

New York supreme court.

WILLIAM J. PORTER, PLAINTIFF, *agst.* ROBERT C. CUTTING, DEFENDANT. } Summons for relief. (Com. not served.)

To the defendant above named:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, at the city-hall in said city, and to serve *and* copy of your answer to the said complaint on the subscribers, at their office, No. 49 Wall street, in the city of New York, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint in this action will apply to the court for the relief demanded in the complaint.

Dated New York, May 4th, 1869.

PRICHARD, CHOATE & SMITH,
Plaintiff's Attorneys.

312

LIBELLANT'S EXHIBIT 1.

Draft Bill of Lading

[U. S. int. rev. stamp, canceled.]
Ship's mark, O.
SAL—120
VOX— 80

200 bales.
89,736 lbs.
at per ton, £

Primage.
Total, £

Guion & Co., agents, Liverpool.
Williams & Guion, agents, 71 Wall street.

Shipped, in good order and well conditioned, by Thomas W. Mann, in and upon the steamship called Idaho, whereof is master for this present voyage, or whoever else may go as master in the said vessel, and now lying in the port of New York, and bound for Liverpool, via Queenstown.

Two hundred bales of cotton, being marked and numbered as in the margin, and are to be delivered from the ship's deck, where the ship's responsibility shall cease, in like good order and condition, at the aforesaid port of Liverpool (the act of God, the Queen's enemies, pi bers, thieves, vermin, barratry of master and mariners, res princes and rulers, loss or damage arising from insufficiency i of packages, from sweating, leakage, breakage, or from stora tact with other goods, or from any of the following perils, wh ing from the negligence, default, or error in judgment of th mariners, engineers, or others of the crew or otherwise, howso cepted, namely: Risk of craft, explosion or fire at sea, in c shore, boilers, steam or machinery, or from the consequence of age or injury thereto, howsoever such damage or injury may b collision, stranding, or other perils of the seas, rivers, or navi whatever nature or kind soever, and howsoever such collisio ing, or other peril may be caused, with liberty, in the eve

313 steamer putting back to New York or into any other port, wise being prevented, from any cause, from proceedin ordinary course of her voyage, to tranship the goods by a steamer, and with liberty to sail with or without pilots, and to assist vessels in all situations, unto order or assigns for the said goods being paid immediately on landing, without a ance of credit or discount, at the rate of five shillings, sterling, gross weight, delivered with primage and average accustomed. ness whereof the master or agents of the said ship hath affirmed bills of lading, all of this tenor and date, one of which bills l complished, the others to stand void.

Weight, measures, contents, quality, brand, and value unknov goods to be taken from alongside by the consignee, immediately the vessel is ready to discharge, or otherwise they may be landed and warehoused at his risk and expense. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship. The master porterage of the delivery of the cargo to be done by the consignees of the ship, and the expense thereof to be paid by the receivers of cargo. The owners of the ship will not be responsible for money, documents, gold, silver, bullion, specie, jewelry, precious stones or metals, paintings and statuary, unless bills of lading are signed therefor, and the value thereof therein expressed.

In accepting this bill of lading, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed.

For the agents,

W. ROGERS ALLEN.

Dated in New York, 4th May, 1869.

particularly all the conversation; I was doing something else in the office, and did not pay particular attention. The next thing I remember was some one of the firm going to Duncan, Sherman & Co.; am not sure which. I know he went, because he said he was going, and when he came back he said he had been. Can't remember distinctly the time of day; it was certainly after 12 o'clock. I think it must have been immediately after this that I was ordered to take the check and pay
310 the drafts; it may have been some minutes after. The check signature is that of Barker, the body that of Mr. Mann. I don't remember the length of time the member of the firm was gone, or whether he went with me. I distinctly remember paying the drafts. A member of the firm of A. C. Schaefer & Co. might have been at Duncan, Sherman & Co.'s when I paid the drafts, but I don't remember it. I don't remember seeing Mr. Kitching. I don't think I went up into the cotton-room at all; think I went straight to the paying-teller, the man who usually holds the drafts and receives pay for them. I have no distinct recollection of seeing the bill of lading by Ladona on that day; don't recollect anything being said by Schaefer to messenger about his not knowing whether this came from Mr. Thompson; remember taking up the drafts when I gave the check; don't remember if I had to wait some time; don't think the conversation between Barker and Schaefer was a long one. I don't recollect if I was there when Barker came in, though my impression is I was. I think I heard him tell him about the circumstances when he came; remember no more of it than I have stated. I don't remember anything more than this: that it would not be paid until the bill of lading was indorsed. I don't recollect if invoice came with advices. My impression is there was only a letter advising the shipment and the drafts. I have never seen any invoice. I generally receive the invoices and enter them on my book. I think the letter was from Waddy Thompson; am quite sure.

E. S. BLACKWELL.

311 CLAIMANT'S EXHIBIT A.

New York supreme court.

WILLIAM J. PORTER, PLAINTIFF, *agst.* ROBERT C. CUTTING, DEFENDANT. } Summons for relief. (Com. not served.)

To the defendant above named:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, at the city-hall in said city, and to serve *and* copy of your answer to the said complaint on the subscribers, at their office, No. 49 Wall street, in the city of New York, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint in this action will apply to the court for the relief demanded in the complaint.

Dated New York, May 4th, 1869.

PRICHARD, CHOATE & SMITH,
Plaintiff's Attorneys.

312 LIBELLANT'S EXHIBIT 1.

[U. S. int. rev. stamp, canceled.]
Ship's mark, O.
SAL—120
VOX— 80

200 bales.
89,736 lbs.
at per ton, £

Primage.
Total, £

Guion & Co., agents, Liverpool.
Williams & Guion, agents, 71 Wall street.

Shipped, in good order and well conditioned, by Thomas W. Mann, in and upon the steamship called Idaho, whereof is master for this present voyage, or whoever else may go as master in the said vessel, and now lying in the port of New York, and bound for Liverpool, via Queenstown.

Two hundred bales of cotton, being marked and numbered as in the margin, and are to be delivered from the ship's deck, where the ship's responsibility shall cease, in like good order and condition, at the aforesaid port of Liverpool (the act of God, the Queen's enemies, pirates, robbers, thieves, vermin, barratry of master and mariners, restraints of princes and rulers, loss or damage arising from insufficiency in strength of packages, from sweating, leakage, breakage, or from storage or contact with other goods, or from any of the following perils, whether arising from the negligence, default, or error in judgment of the master, mariners, engineers, or others of the crew or otherwise, howsoever,) excepted, namely: Risk of craft, explosion or fire at sea, in craft or on shore, boilers, steam or machinery, or from the consequence of any damage or injury thereto, howsoever such damage or injury may be caused; collision, stranding, or other perils of the seas, rivers, or navigation of whatever nature or kind soever, and howsoever such collision, stranding, or other peril may be caused, with liberty, in the event of said
313 steamer putting back to New York or into any other port, or otherwise being prevented, from any cause, from proceeding in the ordinary course of her voyage, to tranship the goods by any other steamer, and with liberty to sail with or without pilots, and to tow and assist vessels in all situations, unto order or assigns; freight for the said goods being paid immediately on landing, without any allowance of credit or discount, at the rate of five shillings, sterling, per bale, gross weight, delivered with primage and average accustomed. In witness whereof the master or agents of the said ship hath affirmed to three bills of lading, all of this tenor and date, one of which bills being accomplished, the others to stand void.

Weight, measures, contents, quality, brand, and value unknown. The goods to be taken from alongside by the consignee, immediately the vessel is ready to discharge, or otherwise they may be landed and warehoused at his risk and expense. The collector of the port is hereby authorized to grant a general order for discharge immediately after the entry of the ship. The master porterage of the delivery of the cargo to be done by the consignees of the ship, and the expense thereof to be paid by the receivers of cargo. The owners of the ship will not be responsible for money, documents, gold, silver, bullion, specie, jewelry, precious stones or metals, paintings and statuary, unless bills of lading are signed therefor, and the value thereof therein expressed.

In accepting this bill of lading, the shipper or other agent of the owner of the property carried expressly accepts and agrees to all its stipulations, exceptions, and conditions, whether written or printed.

For the agents,

W. ROGERS ALLEN.

Dated in New York, 4th May, 1869.

314 (Endorsed:) Deliver the within to the order of James Finlay & Co., of Liverpool.

THO. W. MANN.

LIBELLANT'S EXHIBIT 2.

(Copy.)

NEW YORK, 3*d May*, 186 .

Messrs. H. HENTZ & Co.,
Bought of Thomas Mann, 200 bales cotton, in transit, per str. Idaho, New York to Liverpool, viz:

S A L	120 bales	53,576
V O X	80 "	36,160
	200 bales	89,736 lbs., at 28¼c., $25,350 42

30 days.
Received payment in note at 30 days.

THOS. W. MANN.

Deliver to James Finlay & Co., in Liverpool,
S A L 21 bales.
V O X 14 "
35 bales.

315 LIBELLANT'S EXHIBIT 3.

NEW YORK, 3*d May*, 1869.

$25,350 $\frac{42}{100}$.]

Thirty days after date we promise to pay to the order of Thomas W. Mann, esq., twenty-five thousand three hundred and fifty $\frac{42}{100}$ dollars, value received in 200 bales cotton, on board steamship Idaho, bound hence for Liverpool.

Per H. HENTZ & CO.,
T. EASTWOOD.

(U. S. int. rev. stamp, $10, canceled. U. S. int. rev. stamp, $2.00, canceled. U. S. int. rev. stamp 50 cts , canceled.)

(Endorsed:) Received payment.

THOS. W. MANN.

LIBELLANT'S EXHIBIT 4.

Bill of lading No. 1.
Geo. A. Fosdick & Co., corner Camp and Natchers streets, New Orleans.

Ⓣ

Weight, 71,900 lbs.
Freight $359.50
Primage, 5 per cent. 17.98
$377.48

Southern line, New York and New Orleans steamships: shipped by J. C. Forbes, in good order and well conditioned, on board the steamship called the Ladona, whereof Hovey is master, now lying in the port of New Orleans, and bound for New York (with liberty to tow and assist vessels in distress, and to sail with or without pilots.) To say:

316 One hundred and sixty-five (165) bales cotton, some bales bands off, being marked and numbered as in the margin, and are to be delivered in the like good order and condition at the aforesaid port of New York, the dangers of the seas, restraints of governments, collisions or fire at sea or in port, accidents from machinery, boilers, or steam, or any other accident or danger of the seas, rivers, and steam-navigation, of whatever nature or kind soever, excepted, unto order , or to his or their assigns, he or they paying freight for the said in United States legal currency one-half of one cent (½ cent) per pound, with five per cent. primage, and average accustomed. It is expressly understood that the articles named in this bill of lading shall be at the risk of the owner, shipper, or consignee thereof, as soon as delivered from the tackles of the steamer, at her port of destination; and they shall be received by the consignee thereof, package by package, as so delivered; and if not taken away the same day by him, they may (at the option of the steamer's agents) be sent to the store, or permitted to lay where landed, at the expense and risk of the aforesaid owner, shipper, or consignee. Weights, contents, and value unknown, and not accountable for leakage, rust, or breakage, if properly stowed. Neither the ship or owners will be responsible for gold, silver, precious stones, or metals, jewelry, nor treasure of any kind, unless bills of lading are signed therefor, and the value therein expressed. No bill of lading signed for less than $250.

In witness whereof the master, purser, or agent of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

New Orleans, April 9th, 1869.

For the captain and owners,

E. P. RAVESHIDE.

317 (Endorsed:) Bill of lading. ⟨T⟩ 165 bales cotton. Pr. Lodona.

Pr. Jno. C. Forbes, New Orleans, 9th April, 1869. Jno. C. Forbes. (Signed) Duncan, Sherman & Co.

LIBELLANT'S EXHIBIT 5.

M. Duncan, Sherman & Co. to steamer Lodona and owners, Dr. C. H. Mallory & Co., agents.

For freight from New Orleans:

To New York, on 165 bales cotton	$359 50
5 pr. cent. primage	17 98
Paid April 28, '69	377 48

C. H. MALLORY & CO.,
By H. R. MALLORY.

[U. S. in. rev. stamp, canceled.]

(Endorsed:) Str. Lodona. C. H. Mallory & Co. $377.48. 28th April, 1869. Ex. 2. C. S. B.

318 LIBELLANT'S EXHIBIT 7.

Exchange for $7,000, New Orleans, 9th April, 1869.

At sight of this first of exchange (second and third unpaid) pay to the

order of myself seven thousand dollars, value received, and charge the same to account of ship't 165 b. c. per Lodona.

JNO. C. FORBES.

To Messrs. ADOLPHUS C. SCHAEFER & Co.,
No. , *New York.*

(Endorsed:) John C. Forbes, pp. Waddy Thompson. Chas. A. Janvier. Pay Duncan, Sherman & Co., or order. Wheeless & Pratt. Duncan, Sherman & Co. Received payment. Duncan, Sherman & Co.

319 LIBELLANT'S EXHIBIT 8.

Exchange for $10,000. New Orleans, 9th April, 1869.

At sight of this first of exchange (second and third unpaid) pay to the order of myself ten thousand dollars, value received, and charge the same to account of ship't 165 bs. per Lodona.

JNO. C. FORBES.

To Messrs. ADOLPHUS C. SCHAEFER & Co.,
No. , *New York.*

(Endorsed:) Jno. C. Forbes, pp. Waddy Thompson. Chas. A. Janvier. Pay Duncan, Sherman & Co., or order. Wheeless & Pratt. Received payment. Duncan, Sherman & Co.

320 EXHIBIT B.

Supreme court, city and county of New York.

WILLIAM J. PORTER, PLAINTIFF,
against
ROBERT C. CUTTING, DEFENDANT. } Complaint to recover possession of personal property.

The complaint of the above-named plaintiff respectfully shows to this court that the defendant has become possessed of, and wrongfully detains from the plaintiff, the following goods and chattels of the plaintiff, that is to say, one hundred and sixty-five bales of cotton, part of them marked S A L, and the remainder marked V O X, of the value of seventy-one thousand four hundred and fifty dollars, as he believes. Wherefore the plaintiff demands that the defendant may be adjudged to deliver to the plaintiff the said goods and chattels, and to pay the plaintiff damages for the detention thereof to the sum of two thousand dollars, and that the same may be forthwith delivered to the plaintiff.

PRICHARD, CHOATE & SMITH,
Plaintiff's Attorneys.

CITY AND COUNTY OF NEW YORK:

William J. Porter, plaintiff in this action, being duly sworn, says that the foregoing complaint is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

W. J. PORTER.

Sworn to before me this 29th day of May, 1869.

H. B. HATHAWAY,
Notary Public, N. Y. City.

321 EXHIBIT C.

Supreme court.

WILLIAM J. PORTER
vs.
ROBERT C. CUTTING.

Take notice that we appear as attorneys for the defendant herein, and demand a copy of the complaint, to be served at our office, No. 72 Wall street, New York.

New York, May 5th, 1869.

OWEN, NASH & GRAY,
Defendant's Atttorneys.

To PRICHARD, CHOATE & SMITH, Esqrs.,
Plaintiff's Attorneys.

EXHIBIT D.

Supreme court, city and county of New York.

IN THE MATTER OF THE PETITION OF HENRY Hentz and Leonard Spangenberg, jr., to be made parties defendant in an action pending in this court between William J. Porter, plaintiff, and Robert C. Cutting, defendant.

GENTLEMEN: Please take notice that on the annexed petition, and on the pleadings in said action, the undersigned will move this court,
322 at a special term thereof, to be held at chambers, at the city hall, in the city of New York, on the first Manday of August, 1869, at 12 o'clock, noon, of that day, or as soon thereafter as counsel can be heard, for an order, under section 122 of the code of procedure, directing Henry Hentz and Leonard Spangenberg, jr., the petitioners above named, to be made parties defendant in the action now pending in this court between William J. Porter, plaintiff, and Robert C. Cutting, defendant, and for such other relief as may be just.

New York, July 24th, 1869.

HAMMOND & POMEROY,
Attorneys for Petitioners, 20 Nassau St., N. Y.

To Messrs. PRICHARD, CHOATE & SMITH,
Plaintiff's Attorneys.

To Messrs. OWEN, NASH & GRAY,
Defendant's Attorneys.

Supreme court, city and county of New York.

IN THE MATTER OF THE PETITION OF HENRY Hentz and Leonard Spangenberg, jr., to be made parties defendant in an action pending in this court between William J. Porter, plaintiff, and Robert C. Cutting, defendant.

To the supreme court, held in and for the county of New York:

The petition of your petitioners, Henry Hentz and Leonard Spangenberg, jr., shows to this court—

That an action is now pending in this court by William J. Porter, plaintiff, against Robert C. Cutting, defendant, for the recovery of the possession of certain personal property, to wit, two hundred bales of cotton, or thereabouts, which action has not, as your petitioners believe, proceeded to judgment.

That the defendant received the same as master of the steamer Idaho, from one A. Mann, esq., who received therefor a bill of lading thereof, the same having been shipped on said steamer for Liverpool, England; and that before the commencement of this action your petitioners became the purchasers of said cotton, and the assignees of said bill of lading therefor.

That the claim of the plaintiff in this action is made adversely to petioners' title, and your petitioners desire to litigate the question directly with him.

H. HENTZ.

ITY AND COUNTY OF NEW YORK, *ss:*

HENRY HENTZ, being duly sworn, says that he is one of the petitioners above named; that the foregoing petition is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

H. HENTZ.

Sworn to before me this 24th day of July, 1869.

HENRY ASH,
Notary Public, N. Y. Co.

EXHIBIT E.

At a special term (chambers) of the supreme court, held at the courthouse, in the city of New York, on the 6th day of August, 1869—

Present: Hon. D. P. Ingraham, justice.

IN THE MATTER OF THE APPLICATION OF HENRY Hentz and Leonard Spangenberg, jr., to be made parties defendant in the suit of William J. Porter against Robert Cutting.

On reading and filling the petition of Henry Hentz and Leonard Spangenberg, jr., and on motion of Hammond & Pomeroy, attorneys for the petitioners, and on hearing Prichard, Choate & Smith, attorneys for W. J. Porter, the plaintiff, opposed—

Ordered, that Henry Hentz and Leonard Spangenberg, jr., be made parties defendant herein, and that the summons and complaint be amended accordingly, and that on said Hentz and Spangenberg, jr., causing a notice of appearance for themselves herein to be given to the attorneys for W. J. Porter, within ten days from the entry of this order, a copy of the complaint as amended be served on their attorneys within twenty days thereafter, and the cause thereafter proceed in like manner as though said Hentz and Spangenberg, jr., had been originally made parties defendant in said action, with ten dollars costs of this motion to abide the event.

Ent.

D. P. I.,
J. S. C.

325 EXHIBIT F.

Supreme court, city and county of New York.

WILLIAM J. PORTER
against
ROBERT C. CUTTING, HENRY HENTZ, AND LEONARD SPANGENBERG, jr.

Please to take notice that we are retained by and appear for Henry Hentz and Leonard Spangenberg, jr., made parties defendant in the action, William J. Porter against R. C. Cutting, by an order of the supreme court, dated August 7th, 1869, and demand that a copy of the complaint and all papers be served upon us, as required by said order, at our office, No. 20 Nassau street (room 23,) in the city of New York.

Dated Aug. 7, 1869.

Yours, &c.,

HAMMOND & POMEROY,
Att'ys for Def'ts Hentz and Spangenberg, 20 Nassau St., N. Y.

To PRICHARD, CHOATE & SMITH,
Attorneys for W. J. Porter, Wall St., N. Y.

326 EXHIBIT G.

New York supreme court, county of New York.

WILLIAM J. PORTER, PLAINTIFF,
against
ROBERT C. CUTTING, THE LIVERPOOL AND Great Western Steam Company, Henry Hentz, and Leonard Spangenberg, defendants. } Summons—for relief.

To the defendant above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers at their office, 49 Wall street, in the city of New York, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded in the complaint.

Dated September 20, 1869.

PRICHARD, CHOATE & SMITH,
Plaintiff's Attorneys.

327 New York supreme court, county of New York.

WILLIAM J. PORTER
against
ROBERT C. CUTTING, THE LIVERPOOL AND Great Western Steam Company, Henry Hentz, and Leonard Spangenberg, jr.

William J. Porter, by Prichard, Choate & Smith, his attorneys, by way of amended complaint against the defendants above named, says:

That the defendant, the Liverpool and Great Western Steam Company, is a corporation organized under the laws of the United Kingdom of Great Britain and Ireland.

That the said defendant Cutting has become possessed of and wrongfully detains from the plaintiff the following goods and chattels of the plaintiff, to wit, one hundred and sixty-five bales of cotton, part of them marked "S A L" and the remainder marked "V O X," of the value of twenty-one thousand four hundred and fifty dollars, as he believes.

That the defendants, the Liverpool and Great Western Steam Company, Henry Hentz, and Spangenberg, claim to have some title to said goods adverse to the plaintiff.

Wherefore the plaintiff demands that the defendants be adjudged to deliver to the plaintiff the said goods and chattels, and to pay the plaintiff damages for the detention thereof to the sum of two thousand dollars and for his costs.

PRICHARD, CHOATE & SMITH,
Plaintiff's Attorneys.

CITY AND COUNTY OF NEW YORK, *to wit:*

William J. Porter, being duly sworn, deposes and says that he
328 is the plaintiff in the above-entitled action; that the foregoing amended complaint is true to his own knowledge, except as to those matters which are therein stated upon his information and belief, and that as to those matters he believes the same to be true.

Sworn to before me this day of , 1869.

EXHIBIT H.

New York supreme court, city and county of New York.

WILLIAM J. PORTER
against
ROBERT C. CUTTING, THE LIVERPOOL AND Great Western Steam Company, Henry Hentz, and Leonard Spangenberg, jr.

The defendants, Henry Hentz and Leonard Spangenberg, jr., appearing herein by their attorneys, Hammond & Pomeroy, demur to the complaint herein for the ground that it appears upon the face of the complaint that it does not state facts sufficient to constitute a cause of action.

New York, January 19, 1870.

HAMMOND & POMEROY,
Attys. for Defts. Hentz and Spangenberg, jr.

EXHIBIT I.

To the requisition indorsed on the annexed affidavit of Robert W. Brown in this action, sworn to May 4, 1869, I hereby return:
329 That on said 4th day of May, 1869, by virtue thereof, I took possession of the 165 bales of cotton described in said affidavit, which were on board the steamship Idaho, then at the port of New York, whereof the defendant Robert C. Cutting was then master; and thereafter, and on the 5th day of May, 1869, the notice and affidavit on behalf of the Liverpool and Great Western Steam Company, hereto annexed, was served on me; and thereafter, on said 5th day of May, 1869, the plaintiff delivered to me the undertaking in such case required by the 216th section of the code of procedure; and thereafter, on the same day, the attorneys for the respective parties herein indorse on said requisition, and signed the consent, a copy of which is hereunder written;

whereupon I released said vessel and delivered said cotton to the defendant.

Dated New York, December 29, 1870.

JAMES O'BRIEN, *Sheriff.*

Consent.

We hereby consent that the sheriff of the county of New York release the vessel Idaho, on which the cotton is laden, described in the within affidavit.

PRICHARD, CHOATE & SMITH,
Plaintiff's Attorneys.
OWEN, NASH & GRAY,
Defendants' Attorneys.

Supreme court.

WILLIAM J. PORTER } *against* ROBERT C. CUTTING. }

To the sheriff of New York:

The Liverpool and Great Western Steam Company make claim
330 to one hundred and sixty five bales of cotton, for the delivery of which this action is brought, on the ground of a special ownership thereof and title thereto, as stated in the following affidavit.

The Liverpool and Great Western Steam Co.,
WILLIAMS & GUION, *Agents.*
OWEN, NASH & GRAY,
Attorneys.

CITY AND COUNTY OF NEW YORK, *ss:*

William H. Guion, being duly sworn, says that he is one of the firm of Williams & Guion, agents, in New York, of the Liverpool and Great Western Steam Company, which company is the owner of the steamer Idaho. That the cotton of which the sheriff of the city of New York, under the requisition of the plaintiff above named, has taken possession, is on board the said steamer. That the same was shipped and put on board by T. W. Mann, of the city of New York, as his own, and that bills of lading therefor have been issued on behalf of the said steamer and her owners, which are now outstanding as obligations of the said steamer and owners, but in whose hands at present deponent is unable to state.

That the said Liverpool and Great Western Steam Company, as carriers, in possession of said cotton, have a special property therein, and make claim thereto in behalf of themselves and the holders of the bills of lading issued on the shipment of the same on board said vessel.

WM. H. GUION.

Sworn before me this 5th day of May, 1869.

EDWARD L. OWEN,
Notary Public, N. Y. Co.

331 Supreme court, city and county of New York.

WILLIAM J. PORTER, PLAINTIFF, } *against* ROBERT C. CUTTING, DEFENDANT. }

CITY AND COUNTY OF NEW YORK, *to wit:*

Robert W. Brown, being duly sworn, deposes and says that he resides

in the city of New York, and is in the employ of the plaintiff, William J. Porter, who is now absent from the city and State of New York.

And deponent further deposes and says, on behalf of the said plaintiff, that this action is brought by the plaintiff to recover the possession of 165 bales of cotton, part of them marked "S A L," and the remainder marked "V O X," now in the possession of Robert C. Cutting, master of the steamship Idaho, now lying in the port of New York; that the plaintiff, the said William J. Porter, is lawfully entitled to the possession of said cotton by virtue of a special property therein, the facts in respect to which are as follows: That the said 165 bales were, with other bales of cotton, on sundry days between the 12th day of March, 1869, and the 16th day of April, 1869, delivered by one J. C. Forbes, then having the lawful possession thereof and the right to dispose of the same, to the master of a certain brig called the C. C. Colson, then lying in the port of New Orleans, bound for the port of Liverpool, to be shipped on board thereof for said Liverpool; and the said master of said brig received the said cotton and delivered to said Forbes bills of lading therefor, dated the 16th, 18th, 20th, 24th, and 27th of March, and 1st and 8th of April, 1869, whereby the said master acknowledged the receipt
332 thereof, and the shipment of the same on board of said brig, which bills of lading were in the usual form of such documents, and were made to the order of said Forbes, and by him indorsed; that one Waddy Thompson, then in New Orleans, received from said Forbes said bills of lading, and transmitted them to the plaintiff at New York, and the plaintiff, upon the faith and credit thereof, loaned and advanced to said Thompson, upon the drafts of said Thompson, and the drafts of said Forbes indorsed by said Thompson, $16,500; that after said cotton was, as aforesaid, in the possession of said brig and her said master, and lying upon the pier by said brig, ready to laden on board, and said bills of lading had been given therefor as aforesaid and transferred to said Thompson, the said Forbes unlawfully and fraudulently caused said 165 bales to be removed from the pier by said brig, and to be taken out of the possession and custody of said master, and to be shipped on board a steamship then lying in the port of New Orleans, called the Ladona, and consigned to Adolphus C. Schaefer and George Y. Barker, partners in business under the name of Adolphus C. Schaefer & Co., in the city of New York, to whom it was delivered by said steamship, and by whom, or by some other person with their consent, it has been delivered to the defendant in this action, to be carried in said steamship Idaho to Liverpool, England. Deponent further says that said 165 bales of cotton are wrongfully detained from the plaintiff by the defendant, and that the cause of such detention, to the best knowledge, information, and belief of the deponent, is that the defendant claims that they are the property of the said Adolphus C. Schaefer & Co., or some other persons to whom said Adolphus C. Schaefer & Co. may have transferred them. Deponent further says that said 165 bales of cotton have not, nor have any of them, been taken for a tax assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of the plaintiff, and that the actual value of the same is $21,450, and that the same is now in the city and county of New York.

ROBERT W. BROWN.

333 Sworn to before me this 4th day of May, 1869.

J. CLINTON GRAY,
Notary Public, N. Y.

To the sheriff of the city and county of New York:

You are hereby required to take the 165 bales of cotton described in the within affidavit, and marked in part "S A L" and in part "V O X," from the defendant, Robt. C. Cutting, and to deliver the same to the plaintiff, William J. Porter.

Dated New York, May 4, 1869.

Yours, &c.,

PRICHARD, CHOATE & SMITH,
Attorneys for Plaintiff.

Special return.

We hereby consent that the sheriff of the county of New York release the vessel Idaho, on which the cotton is laden described in the within affidavit.

New York, May 5, 1869.

PRICHARD, CHOATE & SMITH,
Plaintiff's Attorneys.
OWEN, NASH & GRAY,
Attorneys for Defendants.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles E. Loew, clerk of the said city and county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original replevin papers on file in my office, and that the same are correct transcripts therefrom, and of the whole of such originals.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 14th day of January, 1871.

[L. S.] CHAS. E. LOEW, *Clerk.*

Ent.

334 EXHIBIT J.

Supreme court.

WILLIAM J. PORTER }
vs.
ROBERT C. CUTTING. }

Take notice, that we appear for The Liverpool and Great Western Steam Co., claimants of the property taken by the sheriff in this action.

New York, May 5, 1869.

OWEN, NASH & GRAY,
Defendant's Attorneys.

To PRICHARD, CHOATE & SMITH,
Plaintiff's Attorneys.

EXHIBIT K.

New York supreme court.

WILLIAM J. PORTER, PLAINTIFF, } Undertaking of plaintiff's sureties
against } on claim of delivery of personal
ROBERT C. CUTTING, DEFENDANT. } property.

Whereas the plaintiff in this action has made an affidavit that the defendant therein wrongly detains certain personal property, in the said affidavit mentioned, of the value of twenty-one thousand four hundred and fifty dollars, and the plaintiff claims the immediate delivery
335 of such property, as provided for in the second chapter of the

seventh title of the second part of the Code of Procedure: Now, therefore, and in consideration of the taking of said property, or any part thereof, by the sheriff of the city and county of New York, by virtue of the said affidavit and the requisitions thereupon indorsed, we, the undersigned, William Butler Duncan, of No. 249 Fifth avenue, in the city of New York, and William Watts Sherman, of No. 245 Fifth avenue, in said city of New York, do hereby undertake and become bound to the defendant in the sum of forty-two thousand nine hundred dollars for the prosecution of the action of the plaintiff in the New York supreme court against the defendant for wrongfully detaining the said property, for the return to the defendant of the said property, or so much thereof as shall be taken by virtue of the said affidavit and requisition thereupon indorsed, if a return thereof shall be adjudged; and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff in this action.

Dated New York, May 4th, 1869.

(Signed) W. BUTLER DUNCAN.
W. WATTS SHERMAN.

STATE OF NEW YORK,
City and County of New York, ss:

William Butler Duncan, one of the subscribers to the foregoing undertaking, being sworn, says that he is a resident and freeholder within this State, and is worth the sum of forty-three thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

(Signed) W. BUTLER DUNCAN.

Sworn to before me this 4th day of May, 1869.

(Signed) J. CLINTON GRAY,
Notary Public, N. Y.

336 STATE OF NEW YORK,
City and County of New York, ss:

William Watts Sherman, one of the subscribers to the foregoing undertaking, being sworn, says that he is a resident and householder within this State, and is worth the sum of forty-three thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

(Signed) W. WATTS SHERMAN.

Sworn to before me this 4th day of May, 1869.

J. CLINTON GRAY,
Notary Public, N. Y.

STATE OF NEW YORK,
City and County of New York, ss:

I certify that on this 4th day of May, 1869, before me personally appeared the above-named William Butler Duncan and William Watts Sherman, known to me to be the individuals described in and who executed the above undertaking, and severally acknowledged that they executed the same.

(Signed) J. CLINTON GRAY,
Notary Public, New York.

Approved May 4th, 1869.

JAMES O'BRIEN, *Sheriff.*

I certify this is a true copy of original bond now in my possession.
New York, Jan'y 13, 1871.

JAMES O'BRIEN,
Late Sheriff.

337 EXHIBIT L.

Supreme court, city and county of New York.

WILLIAM J. PORTER, PLAINTIFF,
against
ROBERT C. CUTTING, DEFENDANT.

Whereas an affidavit has been made in this action, on behalf of the plaintiff, that the defendant therein wrongly detains certain personal property, in the said affidavit mentioned, of the value of twenty-one thousand four hundred and fifty dollars, and the plaintiff has claimed the immediate delivery of such property, as provided for in the second chapter of the seventh title of the second part of the code of procedure, and has given the undertaking required therefor, and the sheriff of the county of New York has, upon the plaintiff's requisition, taken the said property out of the possession of the defendant; and whereas the Liverpool and Great Western Steam Company have given notice to the sheriff of their claim thereto on behalf of unknown holders of their bills of lading issued therefor: Now, therefore, and in consideration of the premises and the delivery of said property to the plaintiff notwithstanding said claim, we, the undersigned, William Butler Duncan, of No. 249 Fifth avenue, in the city of New York, and William Watts Sherman, of No. 245 Fifth avenue, in said city, do hereby undertake and become bound to the said sheriff in the sum of forty-two thousand and nine hundred dollars, to indemnify him against said claim and all loss and damage by reason thereof.

Dated New York, May 5, 1869.

(Signed) W. BUTLER DUNCAN.
(Signed) W. WATTS SHERMAN.

338 CITY AND COUNTY OF NEW YORK, *ss:*

William Butler Duncan, one of the subscribers to the foregoing undertaking, being sworn, says that he is a resident and freeholder within this State, and is worth the sum of forty-three thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

(Signed) W. BUTLER DUNCAN.

Sworn to before me this 5th day of May, 1869.

(Signed) FRANK THOMPSON,
Notary Public, County of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

William Watts Sherman, one of the subscribers to the foregoing undertaking, being sworn, says that he is a resident and householder within this State, and is worth the sum of forty-three thousand dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

(Signed) W. WATTS SHERMAN.

Sworn to before me this 5th day of May, 1869.

FRANK THOMPSON,
Notary Public, County of New York.

CITY AND COUNTY OF NEW YORK, *ss:*

I certify that on this 5th day of May, 1869, before me personally appeared the above-named William Butler Duncan and William Watts Sherman, known to me to be the individuals described in and who executed the above undertaking, and severally acknowledged that they executed the same.

(Signed) FRANK THOMPSON,
Notary Public, County of N. Y.

We admit the sufficiency of the sureties in the within under-
339 taking, waiving any objection that might be made that both of them are not freeholders and householders within this county.

New York, May 5, 1869.

(Signed) OWEN, NASH & GRAY,
Attys. for Deft. and Claimants, the Liverpool and Great Western Steam Co.

I hereby certify that this is a true copy of undertaking (the original one) now in my possession.

JAMES O'BRIEN.

NEW YORK, *January* 13, 1871.

EXHIBIT M.

New York Supreme Court.

WILLIAM J. PORTER }
vs.
ROBERT C. CUTTING. }

Whereas the plaintiff claims the cotton n this action under bills of lading signed at New Orleans by the master of the brig C. C. Colson, and alleges that said cotton is on board the Idaho, of which defendant is master, now about to sail for Liverpool; and whereas bills of lading have been signed for all the cotton on the Idaho, which are probably in the hands of third parties: Now, therefore, it is agreed that, to save the expense of unloading the cargo of the Idaho, the cotton claimed heren shall be considered as having been actually taken out of the vessel by the sheriff and held by him until an undertaking be given under section 216
of the code, on a claim of property by a third person, and, on the
340 plaintiffs giving the indemnity provided by that section, the Liverpool and Great Western Steam Company, the owners of the Idaho, will hold the said cotton as shipped by the plaintiff, deliverable in Liverpool to his order on payment of freight.

New York, May 5, 1869.

Liverpool and Great Western Steam Co.,
WILLIAMS & GUION, *Agents*,
OWEN, NASH & GRAY,
Attorneys.

PRICHARD, CHOATE & SMITH,
Attorneys for Plaintiff.

EXHIBIT N.

Discharging-receipts of the steamship Ladona, from New Orleans a Matanzas.

New York, 28th April, 1869.

NEW YORK, *April* 29, 1869.

[T] Received in good order from on board steamer Ladona, from New Orleans, the following packages, for order:
Cart No., 165 bales cotton.
Lighter Charles.

T. GROTE.

EXHIBIT O.

APRIL 28, 1869.

[T] A. C. Schaefer & Co., 111 Water street, 165 bales cotton ex steamship Ladona, Roberts' stores to N. Y. Warehousing Co., Red Hook.
41, 25. CHARLES.

341 EXHIBIT P.

NEW YORK, *May* 3, 1869.

O R J B T May 7, a. m. [T] N. Y. Warehousing Co. please deliver to bearer one hundred and sixty-five bales cotton, 165 bales cotton, and oblige.

A. C. SCHAEFER & CO.,
Blackwell.

P. CORCORAN.

EXHIBIT Q.

Ex. Q. (Being copy of entry in engagement-book, of freight per Idaho, voyage q, 5th May, 1869.) "May 1. Thos. W. Mann, Carey & Yale—5 shillings per bale, 200 bales cotton"—amounts carried out.

EXHIBIT R.

Williams & Guion, agents, No. 71 Wall street.

[543] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 27. NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Eleven bales of cotton.

(Signed) R. A. WILLIAMS.

(Indorsed:) Give bill of lading to Thomas W. Mann, for two hundred bales of cotton. Conklin & Davis. New York, May 4, 1869.

342 Williams & Guion, agents, No. 71 Wall street.

[5858] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 30. NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Eleven bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[4934] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 8. NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Five bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[4573] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

343 No. 7. NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Five bales of cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[4573] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 15. NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Five bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[4934] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 16. NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Five bales cotton.

(Signed) R. A. WILLIAMS.

344 Williams & Guion, agents, No. 71 Wall street.

[4573.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 31.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. (Uncomp.) Five bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[5858.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 10.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Thirteen bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, 71 Wall street.

[543.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

345 No. 9.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Thirteen bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[542.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 11.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Thirteen bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[4974.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 33.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. (Uncomp.) Five bales cotton.

(Signed) R. A. WILLIAMS.

346 Williams & Guion, agents, No. 71 Wall street.

[542.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 34.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Thirteen bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[5857.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 40.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. (Uncomp.) Twelve bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[542.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

347 No. 18.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Twelve bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[5752.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 20.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Twelves bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[5752.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 12.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Twelve bales cotton.

(Signed) R. A. WILLIAMS.

348 Williams & Guion, agents, No. 71 Wall street.

[5857.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 21.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Twelve bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[543.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 17.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Twelve bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[5857.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

349 No. 14.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Twelve bales cotton.

(Signed) R. A. WILLIAMS.

Williams & Guion, agents, No. 71 Wall street.

[5858.] NOTICE.

Bills of lading will not be delivered until shippers furnish C. H. clearance and gross weight or gauge.

No. 19.] NEW YORK, *May* 3, 1869.

Memorandum of cargo on board steamship Idaho, bound to Liverpool, for account of Conklin & Davis, marked "O," red. Twelve bales cotton.

(Signed) R. A. WILLIAMS.

EXHIBIT S.

(Copy of entry in Carey & Yale's "little" book.)

1869,
May 1st.
200 cotton, Idaho; 57, Schaefer.

350 EXHIBIT T.

(Copy of freight contract from Carey & Yale's freight-contract book.)

NEW YORK, *May 1st*, 1869.

Engaged for account of A. C. Schaefer & Co., on board steamship Idaho, for Liverpool, 200 bales cotton, at 5 shillings per bale. Pier , North River.

(Signed) CAREY & YALE.

[5c. int. rev. stamp.]

351 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 10th day of August, in the year of our Lord one thousand eight hundred and seventy-one.

Present, the Hon. Charles L. Benedict, district judge.

HENRY HENTZ ET AL.
vs.
THE STEAMSHIP IDAHO, HER TACKLE, &C., The Liverpool and Great Western Steamship Co., claimants.

This cause having been heard upon the pleadings and proofs, and submitted upon the arguments and briefs of the advocates for the respective parties, and due deliberation having been had thereon—

Now, on motion of Owen, Nash & Gray, esqrs., proctors for claimants herein, it is ordered, adjudged, and decreed that the libel herein be, and the same is hereby, dismissed.

And on like motion, it is further ordered that The Liverpool and Great Western Steamship Company, claimant, do recover herein against Henry Hentz and Leonard Spangenberg, jr., libellants, their costs, taxed at six hundred and eighty-eight and $\frac{49}{100}$ dollars, and that judgment be entered against the libellants therefor.

And on like motion, it is further ordered that unless an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the stipulations for libellants' costs cause the engagements of their stipulations to be performed, or show cause why execution should not issue hereon.

CHAS. L. BENEDICT.

352 District court of the United States for the eastern district of New York.

HENRY HENTZ ET AL.
vs.
THE STEAMSHIP IDAHO, HER ENGINES, TACKLE, &c.

SIR: The libellant appeals from the final decree of the court in this cause to the next circuit court.

Dated Aug. , 1871.

HAMMOND & POMEROY,
Proctors for Libellants, 20 Nassau Street.

To SAML. T. JONES, Esq., *Clerk, &c.*

Filed August 8, 1871.

Circuit court of the United States for the second circuit, eastern district of New York.

HENRY HENTZ AND LEONARD SPANGENBURG, jr., libellants and appellants,
vs.
THE STEAMSHIP IDAHO, HER BOATS, ENGINES, tackle, apparel, sails, furniture, and other appurtenances, The Liverpool and Great Western Steam Company, (limited,) appellees.

353 To the honorable the circuit court of the United States for the eastern district of New York, in the second circuit:

The appeal of the above-named appellants respectfully showeth: That on or about the 9th day of June, 1869, the above-named appellants, Henry Hentz and Leonard Spangenburg, jr., exhibited their libel in the district court of the United States for the eastern district of New York, against the above-named steamship Idaho, her boats, engines, tackle, apparel, &c., praying, among other things, for the reasons set forth in said libel, that the said the steamship Idaho, her boats, engines, &c., might be condemned and sold for the payment of the claim of said libellants and costs in said libel mentioned.

That process, issued out of said court, having been served on the said steamship, the claimants did, on or about the 20th day of January, 1870, file their answer to the said libel in the said district court, praying that the said libel be dismissed, with their costs in that behalf, as by reference to said libel and the said answer may more fully appear.

That on or about the first day of October, 1870, the claimants did amend their answer, and file the said amended answer to the libel in the said district court, setting forth new matters in defence, as by reference to said amended answer may more fully appear.

That the said cause came on to be heard before the honorable Charles L. Benedict, judge of the said district court, on or about the 14th, 15th, 16th, and 17th days of February, A. D. 1871, and the 17th day of March, 1871, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties, and on the 8th day of August, A. D. 1871, the said court made its final decree, dismissing said libel, with costs.

And these appellants are advised and insist that the said decree is erroneous, inasmuch as the said libellants were entitled to a decree in their favor.

And these appellants, for these and other reasons, appeal from
354 the whole of the said decree in favor of the claimants to the next circuit court to be held in the said district, and on the said appeal they intend only to have the said cause heard anew, on the same pleadings and the same proofs; and they pray that the said decree, and every part thereof, may be reversed, with costs, and a decree made in favor of the appellants, according to the prayer of the libel, or such other decree thereupon made as to the said circuit court shall seem just, and that the said appellees be condemned to pay to these appellants their costs and damages in the premises.

And they pray that the records and proceedings may be returned to the said circuit court, and that the said decree may be reversed, or such other decree thereon be made as to said circuit court may seem just, and that the appellees may be condemned to pay to the appellants their costs and damages in the premises.

HAMMOND & POMEROY,
Proctors for Appellants.
JAMES EMOTT, *Advocate.*

Filed Aug. 16, 1871.

Circuit court of the United States of America for the eastern district of New York, in the second circuit.

HENRY HENTZ ET AL., LIBELLANTS AND APPELLANTS,
vs.
THE STEAMSHIP IDAHO, &C., THE LIVERPOOL and Great Western Steamship Company, claimant and appellee.
} Bond for costs.

355 Know all men by these presents that we, Henry Hentz, Adolphus C. Schaefer, and George Y. Barker, are held and firmly bound unto the above-named claimants and appellees in the sum of fifteen hundred dollars, to be paid to the said claimants and appellees, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the 16th day of August, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas the above-named libellants and appellants have prosecuted an appeal to the circuit court of the United States for the eastern district of New York to reserve the final decree rendered in the above-entitled suit by the judge of the district court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

H. HENTZ. [L. S.]
ADOLPHUS C. SCHAEFER. [L. S.]
GEORGE Y. BARKER. [L. S.]

Sealed and delivered and taken and acknowledged this 16th day of August, 1871, before me.

D. C. WINSLOW.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Adolphus C. Schaefer and George Y. Barker, being duly sworn, each deposes and says the said Schaefer resides in the city of Brooklyn, and the said Barker in New York, and that he is worth the sum of three thousand dollars over and above his just debts and liabilities.

ADOLPHUS C. SCHAEFER.
GEORGE Y. BARKER.

356 Sworn to this 16th day of August, A. D. 1871, before me.

D. C. WINSLOW,
U. S. Commissioner.

Approved Aug. 16, 1871.

OWEN, NASH & GRAY,
Proctors for Appellees.

357 WESTMINSTER HALL, 27*th April*, 1870.

In the exchequer.

FINLAY & OTHERS
v.
THE LIVERPOOL & GT. WESTERN STEAMship Co'y.

Before Mr. Baron Martin, Mr. Baron Channell, and Mr. Baron Cleasby.

Judgment.

(Transcript of the short-hand notes of Messrs. Cherer and Bennett, 38 Lincoln Inn Fields.)

Mr. BARON MARTIN. I believe that the 12th plea is bad and that the 13th is good. Now, in the declaration it states this, that one Mann caused to be shipped at New York, upon a ship of which the defts. were the owners, certain goods, and that the defts. thereupon, through their agents, executed and delivered to Mann a bill of lading, made on the 4th day of May, which seems to be in the ordinary form, and
358 that Mann endorsed said bill of lading to the plts., to whom the property in the said goods thereby passed. Now, one question that might arise in this case—I do not think it does—is this: What is the effect of that averment in that place? Mr. Benjamin contends that it alleges that by virtue of that transaction the plts. became the proprietors of those goods. Now that would involve an allegation that this man Mann, of whom all that is said in the declaration is that he caused the goods to be shipped, was the proprietor of them, and I very much doubt, speaking solely for myself, whether that is the true meaning of that allegation in the declaration, and whether its true meaning is not by way of in*ter*ference that, by virtue of that endorsement, he became the proprietor. It was what was called in the old form of pleading a virtue cujus, but it is quite immaterial in the judgment I have formed to give any opinion upon that. Then it goes on, "that the goods arrived in L'pool according to the tenor of the bill of lading, & the plts., then & still being the holders of the bill of lading, & de-
359 manded delivery of the goods, and all conditions were performed and all things happened & all times elapsed necessary to entitle

the plts. to have the goods delivered to them at L'pool, yet the goods were not delivered to the plts. That is the declaration.

Now, the 13th plea is this, why it is upon equitable grounds. I know not, because if it is a good defence upon equitable grounds, it is a good defence on legal grounds, too. It is stated by the 12th plea that the bales of cotton were shipped; and the bill of lading provided, amongst other things, that the defts. should not be answerable for the non-delivery of the said goods, provided that the delivery was not prevented by the "acts or restraints of princes and rulers." Now, as that stands there, and without further explanation, in my opinion, the act or restraint of a prince or a ruler would be the interference of the ruler of a state, such as the act of the govornor of that state in intercepting the delivery of the goods & taking possession of them; and, in my judgment,
360 it does not extend to that which is afterwards stated was this supposed act of restraint; but it simply goes on to say, "after the execution and delivery of the bill of lading, and after the shipment on board the ship at New York, certain persons claimed the property in and right to the possession of the goods," but it does not say who they were, and it alleges that they had been fraudulently deprived of the possession of the goods; and thereupon such persons proceeded in due course of law, in the recognized & established judicial tribunals of the place, such tribunals having authority & jurisdiction in the premises, to enforce their claim to and to the possession of the goods; & thereupon, all due and regular steps being taken, & all due & regular notices having been given, the said judicial tribunals adjudged and determined that such alleged true owners were in fact the owners of the goods, and entitled to the same, and to the possession thereof, as against all persons; and thereupon it was by the said judicial tribunals adju'ged and determined that the deft.'s agents, being
361 then in possession of the goods, should hold possession thereof for & should deliver the same to or to the order of the true owners," and that they did so. Now, in my opinion, this is a bad plea. This action is founded upon a contract; & in my judgment, assuming there was in that contract that the defts. were excused from the performance of it by "the acts or restraints of princes and rulers," yet that this is not shewn to be such an act of restraint as comes within the meaning of the contract, and if that is not so, this clearly would not be a defence; but it is nothing more than saying that some person set up a claim over those goods which he had no right to do. It may be we must take that to be true, although one may doubt whether it is exactly correct. However, we must take that to be true for this purpose; but I do not see how the act of a court, upon an application by people who are not named, in deciding that these goods were the property of A. B.
362 or of these people, would preclude these ship-owners, without more, from performing the contract, unless there is something in the contract itself to prevent their performing it. I am of opinion that these "acts or restraints of princes and rulers" must be taken to be those sort of acts as are contained in the ordinary bills of lading & in the ordinary charter-parties. No such act of restraint is shewn as would justify these people in the non-delivery of the goods by reason of the terms in the bill of lading itself and setting up that as a defence.

The 13th plea, in my opinion, is good. A plea requires certainty as to the common intent & meaning of it; that is, that the plea is to be read according to its ordinary & natural meaning, without straining it on the one side and on the other, and, in my judgment, without imagining extraordinary and out-of-the-way cases for the purpose of shewing it is

not included within it. A plea should be read according to its common, natural, & ordinary intent & meaning, and as an educated man would read it, and that is what it does mean, and nothing else.
363 I have already said that I am disposed, from year to year, more to concur in what I recollect hearing the late Mr. Justice Compton say, that it was the fashion introduced by the new rules of pleading, as they were called then, now 40 years old; that they did more to embarras' than anything else, without meaning offence to anybody; that the facts are not candidly stated, and that the court are left to draw inferences by reason of many things being omitted, and certain things being added, and which, it seems to me, does not tend to the proper administration of justice, & I do not think we ought to be called upon to decide questions of law until we know what the facts really are, and that we ought not to be left to infer what the facts are from certain statements added and certain omissions in the document called "pleadings." Reading this plea in the manner I have mentioned, and believing that the certainty of the plea is merely a common and ordinary certainty, it states this: that these goods were, at the time of the shipping & lading on board the vessel, not the
364 goods of Mann, nor had he any right, authority, or title to ship them; that he had obtained them by fraud from the real owner, one Porter; that the shipping was without the consent of Porter & against his will, & was obtained by Mann by fraud, & with the intent to defraud & deprive Porter of the said goods. That is the allegation, & that is to be read, in my judgment, according to its common and ordinary meaning. It seems to me that these goods were never Mann's, but were Porter's, and always continued so; and it does not appear to me that Porter got the goods under a sale, and I do not think we have any right to enquire, nor is it necessary for us to know, whether or not they were got by a sale. They never ceased to be Porter's, and were never Mann's, and Mann got hold of them by fraud.

Now, assuming that this was the averment contained in the plea which Mr. Benjamin suggests, in my judgment this would be an argumentative traverse of it; and if there be contained in the declaration an averment that these goods were the property of the plt. by virtue of this
365 endorsement or by virtue of Mann's ownership and Mann's possession of them that that would be an argumentative traverse of it; and giving that its ordinary meaning, we must assume that these goods never ceased to be Porter's, but always were his and never by a contract of sale or otherwise ceased to be his. That seems to me to be the natural and ordinary meaning of the language of the averment I have read. The *the* plea goes on to aver that the defts. were ignorant of the fraud & of the promise probably, that would be necessary, because if they entered into this contract treating Mann as entitled to deal with the goods, & if they entered into the contract knowing what his title was, in all possibility they would be estopped from denying that he was a person with whom they could make a valid contract. They say that the bill of lading and the promise of the defendants were obtained by Mann by fraud and not otherwise, and that the bill of lading was
366 fraudulent' endorsed by Mann to the plaintiffs. Now, Mr. Benjamin says, and says truly, that it is not alleged that it is in fraud of the plaintiffs themselves, and that that averment would be satisfied by saying that Mann desired to transfer the possession or apparent possession of the property to others, and did mean himself to commit a fraud by endorsing it to an innocent person. In my judgment, under the circumstances, it would not give this innocent party a title. It is

not like an indorsement of a bill of exchange. It depends upon the act of Parliament, and except the man has a power to endorse by virtue of some legal authority or equitable authority, nothing would pass under the bill of lading. And the defts. further say that after the goods were so shipped & loaded at New York on the defts.' ship, Idaho, and before the ship left New York, Porter demanded the goods from the defendants' agent in New York.

In my judgment the plea is good if it stopped there, & when-
367 ever Porter, the real owner, went and demanded these goods from this man, that this man would be liable to an action of trover, or whatever it may be in America which is analog'us to an action of trover; he would be liable to an action to Porter for refusing to deliver these goods. That is my judgment in this case. All the rest goes to shew that the goods were the goods of Porter, and that Mann brought them to England by Porter's direction. It seems to me sufficient to say that when goods belonging to a man are got from him by fraud and they have passed into the possession of the person who has got possession of them by a sale, whereby the property was so passed by a man who has got possession of the goods improperly, and put them on board a ship, & who has improperly obtained the bill of lading, when if the true owner interposes & demands these goods, he is entitled to do so and is entitled to maintain an action against the ship-owner, and the ship-owner is excused in consequence from delivering the goods to the consignor. I am quite satisfied from my ac-
368 quaintance with the cases in this court of that fact. And I have looked in two or three vols., of the reports shortly before the late Mr. Baron Watson's death, but I cannot find the case I referred, but I recollect the case very well. It was a case in which I had some doubt. I thought the action being founded on the contract, there was the possibility of some doubt about the contract itself. I know the other members of the court were of a different opinion, and I remember the judgment was to the effect I have mentioned, that the claim to the goods of the real owner excused the ship-owner from delivering them to the man called the consignor. In my judgment the 13th plea in this case seems to me to be a good plea.

Mr. BARON CHANNELL. I am of opinion that the plt. is entitled to the judgment of the court upon the 12th plea. It appears to me that that plea cannot afford any answer to the action on the ground
369 that the facts stated in the plea being the case within the exception of the bill of lading, the facts show an exception arising from the restraint of princes and rulers, but it is said that part of the plea may be disregarded for the present, and that the 12th plea is a good answer to the action, upon the ground that it shews an adjudication by a court of New York proceeding in the matter in rem. I don't think that that effect can be given to the 12th plea, and therefore the 12th plea is bad. With regard to the 13th plea, I agree with my brother Martin in thinking that our judgment should be given to the defendant. It is necessary in any view for the moment to advert to the declaration, because Mr. Benjamin pressed upon us that one objection to the 13th plea is that it omits altogether to notice, & altogether gives the go by to, that which is an essential allegation in the declaration. Now, the declaration does not in terms allege any property in the ship-
per. The declaration seems to me to allege that the shipper having got the bill of l ding, by the indo sement of the bill of lading the
370 property in the goods vested in the present plts. I rather think that is set up as a conclusion of law, but upon the whole I am of opinion

that the declaration does not sufficiently allege a property so as to exclude any objections that the declaration would be bad upon the demurrer; but even taking that view in favor of the plaintiff, I am of opinion that the facts upon the whole of the 13th plea amount to an informal denial of that which I have taken to be alleged in the declaration, because the 13th plea says that the goods were not the goods of Mann, who shipped them, nor had he any right, authority, or title to ship and to load them, and that he had obtained them by fraud from the real owner thereof, one Porter; and then it goes on to state that the shipment was without the will and consent of Porter, and thereby he was defrauded. Now, I quite adopt Mr. Benjamin's argument that there may be such a fraud that may still have the property in the party who committed the fraud so
371 as to transfer the title to the indorser of the bill of lading. But I think in that case which he has put that if there is a fraudulent sale and the vendor does not interfere to rescind the contract, then the property in the goods when so sold would remain in the vendee, fraudulent as his conduct may have been, and in that case he could transfer the goods by an indorsement on the bill of lading. But I think in this case that this plea is good on the grounds stated; it shews a common intent, although informal. It does in fact deny that these goods were the goods of Mann or that Mann had any right, authority, or title to ship them. I do not know what the case would be if an agent got authority from his principal not only to ship goods but to ship them in his own name. He would have a right and title to indorse. I think this plea does negative any such conclusion as that, and it meets informal' but sufficiently, according to the rule of certainty, the common intent of this allegation in the declaration that the goods were his property, because if that be a conclusion of law, by the indorsement it became the property of the indorsee, the present plaintiff, but only in the event of the
372 shipper having a right or authority to ship, or having an actual right or some right or authority to ship. Then that authority is expressly denied in the plea, which authority is the foundation of the plaintiff's right. It rests entirely upon the indorsement. The plea negatives the right of Mann to ship the goods or to endorse the bill of lading.

Mr. BARON CLEASBY. I am of the same opinion. I certainly think the declaration is good, because it follows the act of Parliament. The act of Parliament is that the indorsee of the bill of lading to whom the property in the goods passes may sue as for a contract in the bill of lading so made with him. The declaration alleges that the bill of lading was indorsed to Mann and that by virtue of the indorsement the property passed to him. I think it is therefore clearly within the act of Parliament, & it is not necessary to resort, I think, to that allegation of the declaration which was afterwards adverted to, namely, that the contract was that the goods of the "Thomas W. Mann" so shipped as aforesaid, because I think if it was necessary to resort
373 to that, although it would still help to make the declaration sufficient, that it would only be an inferential & argumentative allegation of the property of the goods being in Mann; & we shall have to bear that in mind when we come to consider whether the plea is a sufficient answer or not. If there had been a distinct allegation that the property had been the property of Mann, why then I think it would have been necessary to have resorted to that allegation. Now, with regard to the validity of the plea, I should have very much liked to have known what the real facts of the case were, & this is one of those cases in which I think we might very well have ordered this argu-

ment to have stood over till the facts were tried, but it is to' late to do that now; but there is this to be said, that what we are determining will not determine the result of the case at all; it will only determine the validity of this plea or rather this demurrer, because on the traverse of all the allegations contained in this plea the plt. will, if he thinks
374 proper, have a special finding or in some way or other be enabled to obtain the judgment of the court if he is entitled to it.

Now I have felt some little doubt myself on the validity of the plea, strictly speaking, but still I agree with the rest of the court, because I think these two allegations, taken together, namely, "that the sd. goods, before & at the time of the shipment, were not the goods of Mann, nor had he any right, authority, or title so to ship," do meet the allegation of title to sue which is involved in the declaration. No doubt the deft. might have said, & I think he would have done better if he had said distinctly, that the property in the goods did not, by virtue of the indorsement, pass to the plts. That, of course, would have disposed of the case one way or the other. The facts would have been ascertained, & then we could have said eventually whether the property did or did not pass. It does not do so. It mixes up a variety of things in this plea together, some of which, it appears to me, are material and some are not. Still I think, having regard to the statement in the dec-
375 laration, & taking these two allegations together, that they were not Mann's, & coupling that with the statement that he had not at the time any right, title, or authority to ship the goods whatever, I think they do meet the title which the plt. is bound to set up in order to entitle him to sue upon this contract.

With regard to the 12th plea, I do not think it necessary to add anything. We cannot depart from anything which was intended by that plea. It is not a plea founded upon a judgment in rem which disabled the deft. from proving the plea, but a plea founded on the contract, coming under the words "restraint of princes & rulers," I am clearly on that of opinion with the rest of the court, & therefore that plea must fail.

376 MAY 21ST, 1873.—Stated term.

Present, the Hon. Ward Hunt, associate justice Sup. Ct. U. S.

Court opened by proclamation.

HENRY HENTZ ET AL., LIBELLANTS & APPELLANTS,
vs.
THE S. S. IDAHO, &C., APPELLEES. } Argument on appeal.

Argument opened for libellants and appellants by Mr. Emott.
Hearing adjd. to May 22nd, 1873, at 12 m.
Mr. Choate responds for claimants and appellees.
Papers handed up; decision reserved.

377 U. S. circuit court, E. dist. New York.

HENRY HENTZ ET AL.
vs.
THE STEAMSHIP IDAHO ET AL.

J. Emott, Wm. G. Choate.

HUNT, justice:

This is libel for the non-delivery of 165 bales of cotton. The district court dismis'ed the libel, and the libellants appeal to this court.

On the 4th of May, 1869, Thomas W. Mann shipped on the steamer Idaho, for Liverpool, 200 bales of cotton, containing 89,736 pounds, marked 120 bales S. A. L. and 80 bales V. O. X. Mann received a bill of lading, endorsed it to James Finlay & Co., Liverpool, at the request of the plaintiffs, to whom he had previously sold the cotton. On arrival at Liverpool 165 bales of the cotton were delivered to Baring & Brothers and 35 to the plaintiffs, their demand for the residue
378 being refused. The delivery to Baring Brothers was upon the order of Wm. F. Porter & Co., who claimed to own the cotton.

The delivery of the cotton to agent of Porter is justified, 1st, on the ground that Porter was the owner of the cotton; 2d, that the cotton was taken from the vessel by the sheriff of New York upon a replevin proceeding against the vessel instituted by the direction of Porter.

If the first proposition is a sound one, and the facts fall within the principle, it will not be necessary to discuss the second one.

It is laid down in the books that a carrier cannot set up against the shipper a naked jus tertia or adverse title of a hostile claimant. (Story, Bail, section 266, 582; Angel, Com. Law, section 335.) It is conceded, however, that when the true owner has compelled a delivery to himself by legal proceedings, *that* such delivery is a defense to the claim
379 of the shipper. So it is conceded that when the shipper has obtained the goods by fraud or felony, the carrier may deliver them to the true owner.

I am of the opinion also that this rule is subject to another qualification, to wit, that the carrier still holds the goods in his possession. A carrier receiving goods from A for carriage, cannot when called upon for the goods which are still in his possession defend himself by saying that B is the true owner of the goods. But if he have actually delivered the goods to B and B is the true owner of them, then I conceive he may so answer. Among others, two reasons may be given for this rule; the delivery to the carrier and his undertaking to transport and deliver are based upon the assumption and representation by the shipper that he is the owner of the goods, or at least that he has such title; that he has right to deliver them to the shipper and to receive them on arrival at their destination. Thus it is conceded that if the ship-
380 pers had stolen the goods or obtained them by fraud, he cannot enforce against the carrier the contract to deliver, altho' the carrier still retains it in his possession. This is upon the theory that he never had title to the property, and that the carrier's contract was based upon the contrary assumption, which failing his obligation ceases, and that he holds it for the delivery to the owner. If there be no title in the shipper and the goods are already delivered to the real owner, the reason of the rule is still stronger. The carrier cannot relieve himself upon a theoretical idea of non-ownership in the shipper unless where the goods are obtained by fraud or felony. Public policy will not permit him to hold the goods for his own benefit and deny the title of his shipper. If, however, he is content to assume the burden of proving another to be the true owner and show that he has made delivery to such owner, he should be discharged of his contract to deliver to
381 the assumed owner. Bassel vs. Spofford, 45 N. Y., 387; Beleren vs. H. R. R. Co., 36 N. Y., 403; Rogers vs. War, 34 N. Y., 463; Sheridan vs. N. Quay, c. 4, c. B. N. S. 618, 93 E. C. L. 618; Finlay vs. L. W. & G. W., S. Co., Law Report 251.

Another reason for this rule is that in case of such delivering no damages is sustained by the shipper; not being the owner of the goods, he loses nothing to which he was entitled. The true owner, the party

entitled to damage in case of a loss of the goods, has them. The position is the same as if the goods were delivered to the shipper and at once recaptured from him by the true owner. The rule that the carrier may deny the shipper's title when he has delivered the goods to the true owner is founded in justice, and does not seem to be liable to the same objections as when the goods are held by the carrier. It differs from the rule that delivery under a judicial proceeding is a defense only in the nature of the evidence that the goods were owned by and
382 have been delivered to the true owner. The propositions are based upon the same principle. I think it is the true rule.

Whether Porter was the true owner of the cotton is a compound question of law and of fact.

Porter's title is based upon bill of lading dated April 1st, 1869, certifying to the shipment on board the brig C. C. Colson of 140 bales of cotton, with marks and of certain weights, and signed by Julius Patt, as master thereof. Accompanying the bills of lading and based upon it were drafts to the amount of $18,000.00 which were paid by Porter or credited to the account of the shippers. The title of the appellants was based upon an actual shipment on the Ladona, the forwarding of a bill of lading and the delivery of the cotton in dispute. The facts in relation to the shipment to Porter are substantially as follows:

When the bill of lading was signed by the master of the Colson on the 1st of April, 1869, no such cotton as described in it
384 was on board or had been delivered to the vessel. The bill was executed by mistake or by fraud. It is said that the cotton was actually delivered on the 8th of the same month, and that the bill of lading became operative and effectual from the time of such delivery, no right of other parties intervening before such delivery. Rowley vs. Bigelow, 12 Peck, 314; Halliday vs. Hamilton, 11 Wall, 565. This appears to be the law. Was there a delivery on the 8th of April, 1869? On the morning of that day, the 140 bales of cotton were drawn from the cotton-press and delivered to the Colson for shipment in the manner testified to by F. M. Roby, the mate of the vessel. Another vessel laid next to the wharf close to her, and outside of her laid the Colson. Mr. Roby says: "These bales were delivered at the wharf at which the Colson was then lying, upon which all cargoes intended for her were deposited. I received the cotton as mate on behalf of said brig, and it was not put on board; when received the cotton was deposited
385 on the wharf within forty feet of the Colson. It remained there in my custody as mate from some time in the morning of the 8th of April, 1869, it was brought there, until the evening of that day, when it was carried away; * * the tackling of the Colson did not reach to the place on the wharf where the cotton was deposited. * * The wharf was the usual and only place to deposit freight when delivered to the vessel to be taken on board. The cotton was deposited in the usual and customary place for cargo to be deposited for the Colson. * * I gave receipt for 126 bales of cotton; of the 140 bales Mr. Keenan, second mate, receipted for 14 of the bales. The receipt mentioned were to the Shipping Press Co., from whence the cotton was sent to the Colson by the order of Fabes, and were in the following form: New Orleans, April 8th, 1869. Brig C. C. Colson. Received in good order from Sam'l Boyd & Co., Shippers Cotton Press * * bales cotton, marked * * F. M. Roby." The cotton was removed on the evening of the same day by Fabes, the shipper.

386 I cannot doubt that this constituted a good delivery of the cotton to the ship, and that from the moment of such delivery the

cotton was in the "custody of the brig and was in law shipped on the brig." It was a delivery to and a receipt by the brig for the purpose of shipment. It was the commencement of the liability of the carrier, which dates from the time the goods are received by him for the purpose of transportation. 1 Par. Mar. Law, 132, (where the cases are reviewed.)

The bill of lading attached from the receipt of the goods, and it was the duty of her officers to have restrained them to answer to the claim of the holder of it. Whoever then and afterwards held the bill of lading was the owners of the goods. Their subsequent removal, while it might induce the successful perpetration of a fraud, did not affect his title. (Bailey *vs.* H. R. R. Co., 49 N. Y., 70.)

387 The statute of Louisiana, which prohibits and makes criminal the delivery of a bill of lading, except upon a receipt of the goods, does not affect the case.

The bill of lading, when delivered, was of no effect, and the statute cannot make it more than void. What is the effect of a subsequent delivery is not within the scope of the statute. There is no reason to suppose that the statute was intended to prevent the remedying of a mistake or the reparation of a wrong, so far as it was in the power of the party to do it. The goods were shipped on the 8th of April to Porter, and by such shipment and the previous bill of lading, his title became perfect. As the holder of this bill of lading, Porter was the true owner of this property. The carrier delivered it in Liverpool to his agent, and, according to the suggestions already made, such delivery discharged him from liability to a shipper who was not such owner.

388 The details of this case are extended. Numerous questions of law, as well as of fact, are argued by the respective counsel. They do not affect the main proposition hereinbefore stated. If I am correct in these, the case, in its general principle, was well decided below. I have not discussed the question of *identification*, as I am satisfied that the cotton delivered to the Colson is the same that was shipped on the Idaho and the subject of the present suit.

I have not discussed many points which are elaborately argued on both sides, nor have I attempted an analysis of the case upon disputed questions. I have passed upon facts enough to justify a conclusion, and have referred to authorities so far as I conceive it to be necessary to sustain the position taken. In addition to the 140 bales of cotton, the claimant has received 25 other bales, which were originally the property of the appellants. This has resulted from an intermixture and confusion of the goods by the appellants in their efforts to obliterate

389 the original marks upon the 140 bales so as to prevent their identification by other claimants. If not in bad faith, the conduct of the appellants in that respect was unwise and unfortunate. It is possible that with great effort the different parcels might have been separated and the 140 bales identified at Liverpool. I cannot say that this could have been done at all, certainly not easily. The bales were of different grades or qualities and of different values.

The setting apart of 140 bales would not certainly give to the owners the value of the cotton to which he was entitled. The difficulty of determining which were his bales and which were not seems almost insuperable.

The rule on this subject is thus laid down by Chancellor Kent:

"With respect to a confusion of goods, where those of two persons are so intermixed that they can no longer be distinguished, each of them have an equal interest in the subject, as tenants in common

390 if the intermixture was by consent. But if willfully made, without mutual consent, then the civil law gave the whole to him who made the intermixture, and compelled him to make satisfaction in damages to the other party for what he had lost.

"The common law gave the entire property, without any account, to him whose property were originally invaded and its distinct character destroyed.

"If A will willfully intermix his hay or corn with that of B, or casts his gold into another's crucible, so that it becomes impossible to distinguish what belonged to A from what belonged to B, the whole belongs to B. But this rule is carried no further than necessity requires, and if the goods can be easily distinguished and separated, as articles of furniture, then no change of property takes place. So, if the corn or flour mixed together were of equal value, then the injured party takes his given
391 quantity and not the whole. This is Ld. Elder's construction of cases in the old law. But if the articles were of different value or quality, and the original value not to be distinguished, the injured party takes the whole. It is for the party guilty of the fraud to distinguish his property satisfactorily or to lose it. No court of justice is bound to make the discrimination for him." (2 Kent Com., 364, 365; Lupton vs. White, 15 Vesey, 432, 440; Chedwith vs. Edwards, 80, 46.)

I have had much doubt upon this branch of the case, but I am not able to say that the judgment is erroneous.

The transactions in the courts of New Orleans cannot affect the question in litigation, which is simply as to the ownership of the 165 bales of cotton when delivered in Liverpool to the agents of Porter & Co. If they were there properly delivered to them the decree is right and must be affirmed. The accounts of the parties or any equitable
392 claims arising from other transactions must be disposed of in a sale to be brought for that purpose.

Decree affirmed with costs.

393 At a stated term of the circuit court of the United States of America for the eastern district of New York, held at the court-rooms in the city of Brooklyn, on the 15th day of October, 1873.

Present: Hon. Ward Hunt, judge of the circuit court.

HENRY HENTZ AND LEONARD SPANGENBERG, jr., libelts. and appellts.,
agst.
THE STEAMSHIP IDAHO, HER ENGINE, &C., The Liverpool and Great Western Steamship Company, clm't & resp'dt.

This cause having been heard on the pleadings and proofs on the appeal of the above-named libellants from the final decree of the dis-
394 trict court of the United States for the eastern district of New York dismissing the libel herein with costs, and having been argued by the advocates of the respective parties and due deliberation having been had in the premises, it is now, upon motion of Owen, Nash, & Gray, proctors for the above-named claimants,

Ordered, adjudged, and decreed that said final decree of the district court be, and the same is hereby, in all things affirmed with costs, and that said claimant recover against the said libellants, Henry Hentz and Leonard Spangenberg, jr., the sum of six hundred and eighty-eight and $\frac{42}{100}$ dollars, the amount of the costs of said claimant, as taxed in the said

district court which it was adjudged by said final decree that the said claimant should recover against the said libellants, and as damages by reason of said appeal of said libellants the interest on the amount
395 of the costs of said district court from the 10th day of August, 1872, the date of said decree, amounting to the sum of fifty-six & $\frac{80}{100}$ dollars, together with the costs of said claimant on the appeal of this court, taxed at two hundred and thirty-seven & $\frac{40}{100}$ dollars, amounting altogether to the sum of nine hundred & eighty-two $\frac{78}{100}$ dollars.

And it is further ordered, adjudged, and decreed, that unless and appeal be taken from this decree within the time prescribed by law and the rules and practice of this court, that a summary judgment be entered against the said libellants, Henry Hentz and Leonard Spangenberg, jr., and Adolphus C. Schaefer and George Y. Barker, the sureties on the appeal herein, for said sum of nine hundred and eighty-two and $\frac{78}{100}$ dollars.

WARD HUNT,
Asso. Just. Sup. Ct. U. S.

396 (Endorsed:) U. S. circuit court, east'n dist. of N. Y. Henry Hentz et al., lib'l'ts & appell's, v. The Steamship Idaho, &c., The Liverpool & Great Western Steamship Co., cl'm't & resp'd't. Decree. Owen, Nash & Gray, prs. for cl'm't & resp'd't, 71 Wall st., N. Y.

We hereby consent to the entry of the within decree.
N. Y., 15th Oct., 1873.

HAMMOND & POMEROY,
Proctors for Lib'l'ts & App'l'ts.

Filed October 15th, 1873.

397 Supreme court of the United States.

HENRY HENTZ AND LEONARD SPANGENBERG, jr., libellants and app'l'ts,
ag'st
THE STEAMSHIP IDAHO AND THE LIVERPOOL and Great Western Steamship Co.

To the honorable the Supreme Court of the United States:

The petition and appeal of the above-named libellants and appellants showeth, That on or about the day of , the above-named libellants filed their libel in the district court of the United States for the eastern district of New York, against the steamship Idaho, her tackle, engine, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of liens, civil and mari-
398 time, in which libel it is alleged and praying as therein contained, to which said libel the petitioners refer for its contents. That thereafter, on or about the 20th of January, 1870, the claimants, the Liverpool and Great Western Steamship Company, having executed the necessary stipulations for costs and value, did file their claim and answer, alleging, as therein contained, and insisting that the said steamship Idaho was not liable for the damages claimed by said libellants, and praying that said district court would pronounce against said libel and condemn the libellants in costs, as will more fully appear on reference to said answer, and to which, for the contents thereof, these appellants ask leave to refer. That thereafter the said cause came on to be tried and to be heard before the Hon. Charles L. Benedict, sitting as judge

399 of said district court, on the 14th, 15th, 16th, and 17th of March, 1871, upon the allegations and proof adduced by the respective parties, and said judge, on or about the 10th day of August, 1871, made a decretal order or sentence, bearing that date, dismissing the libellants' libel, with six hundred and eighty-eight $\frac{49}{100}$ dollars costs, as by reference to said decretal order will appear.

That these appellants being advised that said decree of said district court was erroneous, insomuch that these libellants were entitled to a decree for all their damages as claimed, appealed from said decree to the circuit court of the United States in and for the said eastern district of New York, and in their petition of appeal to said circuit court gave notice that on said appeal these appellants intended to seek a new
400 decision on the facts on the pleadings and proofs, and they prayed in their said petition that the said decree and every part thereof might be reversed with costs, and a decree made in favor of the appellants according to the prayer of the libel, and that the claimants be condemned to pay their costs and damages; that thereafter the said cause came on to be tried and to be heard before the honorable Ward Hunt, sitting as circuit judge in the city of Brooklyn, in said eastern district, on the 21st and 22nd day of May, 1873, in the May term of said court, 1873, upon the allegations and proofs adduced by the respective parties which had been transmitted on the said appeal to said circuit court. And the said circuit judge having advised thereon, made his decree, bearing date the 15th October, 1873, and entered on or about
401 the 15th day of October, 1873, with the clerk of said court, thereby affirming the said decree of said district court, and adjudging and decreeing as therein contained, to which said decree these appellants refer for its contents; and these appellants are advised and insist that said decree is erroneous, insomuch that the said decree of said district court should have been reversed and a decree made against the claimants for damages and costs.

And these appellants, for these and other reasons, appeal from the whole and every part of said decree of said circuit court to the Supreme Court of the United States, and they pray that the said decree and every part thereof may be reversed, and a decree made in favor of the appellants, according to the prayer of the libel, or that such other decree may be made as to the said Supreme Court shall seem just,
402 and that the said libellants may be condemned to pay these appellants their costs and damages in the premises.

HAMMOND & POMEROY,
Proctors for Lib'l'ts and Appellants.

(Endorsed:) Supreme Court of the United States. Henry Hentz and Leonard Spangenberg, jr., libellants & app'lts, vs. the Steamship Idaho & the Liverpool and Great Western Steamship Co., claimants and app'lees. Petition and appeal. Hammond & Pomeroy, proctors for lib'l'ts & app'lees. Filed September 23rd, 1874.

403 Circuit court of the United States of America for the eastern district of New York, in the second circuit.

HENRY HENTZ ET AL., LIB'L'TS & APP'L'TS,
vs.
THE STEAMSHIP IDAHO, &C., THE LIVERPOOL & Great Western Steamship Company, cl'm'ts & resp'd'ts. } Bonds for costs.

Know all men by these presents, that we, Henry Hentz and Daniel

W. Talcott, are held and firmly bound unto the above-named claimants in the sum of fourteen hundred dollars, to be paid to the said claimants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated the 26th day of January, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas the above-named Henry Hentz et al. have prosecuted their appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the eastern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named Henry Hentz et al. shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

H. HENTZ. [L. S.]
DANIEL W. TALCOTT. [L. S.]

Sealed and delivered, and taken and acknowledged, this 26th day of January, 1874, before me.

D. C. WINSLOW,
U. S. Comr.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Henry Hentz and Daniel W. Talcott, being duly sworn, each for himself doth depose and say that he, Hentz, resides in the city of Brooklyn, and Talcott resides in Fairview, Bergen Co., New Jersey; that he is worth the sum of twenty-eight hundred dollars over and above his just debts and liabilities.

H. HENTZ.
DANIEL W. TALCOTT.

Sworn to this 26th day of January, A. D. 1874, before me.

D. C. WINSLOW,
U. S. Comr.

(Indorsed:) Vol. , page . U. S. circuit court. Henry Hentz et al. vs. the S. ship Idaho. Bond for damages and costs on appeal. , proctor. Filed this 23 day of Sept., 1874.

404 By the Hon. Charles L. Benedict, one of the judges of the circuit court of the United States for the eastern district of New York, in the second circuit.

To the steamship Idaho and the Liverpool and Great Western Steamship Company:

Whereas Henry Hentz and Leonard Spangenberg, jr., libellants, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the eastern district of New York, in the second circuit, made in favor of you, the said steamship Idaho and the Liverpool and Great Western Steamship Company, against the said libellants and appellants, and have filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the

second Monday of October next, to do and receive what may ap-
405 pertain to justice to be done in the premises.

Given under my hand at the city of Brooklyn, in said eastern district, in the said circuit, the 23rd day of September, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-ninth.

(Indorsed:) Supreme Court of the United States. Henry Hentz and Leonard Spangenberg, jr., libellants & appelts., vs. The Steam-tug Idaho and the Liverpool and Great Western Steamship Company. Citation. Filed September 23rd, 1874.

406 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Samuel T. Jones, clerk of the circuit court of the United States of America for the eastern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one (1) to 406 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Henry Hentz et al., liblts. & appellants, vs. The Steamship Idaho, her tackle, &c., clmt. & appellees, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, in the second circuit, this 5th day of October, A. D. 1874, and of the Independence of the said United States the ninety-ninth.

[SEAL.] SAMUEL T. JONES,
Clerk,
By E. B. HUESTED, *Deputy.*

407 UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this day of March, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the said United States the ninety-ninth.

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

408 U. S. circuit court, eastern dist. of New York.

HENRY HENTZ ET AL., APPLLTS.,
against
THE STEAMSHIP IDAHO, HER ENGINE, &C., The Liverpool and Great Western Steam Co., app'llees.

We hereby stipulate and consent that the decree entered in this cause in the office of the clerk of the above-entitled court, on the 15th day of October, 1873, be amended, nunc pro tunc, by striking out the words "that said final decree of the district court be, and the same is hereby, in all things affirmed, with costs," after the words "ordered, adjudged, and decreed," where the latter first appear in said decree, and substi-

tuting in the place and stead thereof the words "that the libel filed in this cause be, and the same hereby is, dismissed with costs," and that an order to that effect may be entered without notice.

Dated N. Y., 13 Feb'y, 1875.

OWEN, NASH & GRAY,
Proctors for Clmt. & Appellees.

(Indorsed:) Filed March 1st, 1875.

409 At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second circuit, held at the U. S. court-rooms, in the city of New York, on the 23rd day of February, 1875—

Present, the Hon. L. B. Woodruff, circuit judge.

HENRY HENTZ AND LEONARD SPANGENberg, jr., libllts. & appllts.,
against
THE STEAMSHIP IDAHO, HER ENGINE, &C., The Liverpool and Great Western Steam Company, clmt. & app'llees.

On reading and filing the annexed consent of the parties hereto, and on motion of Owen, Nash and Grey, proctors for the claimants and appellees, it is ordered that the decree entered in this cause on the 15th day of October, 1873, be, and the same hereby is, amended, nunc pro tunc, by striking out of said decree the words "that said final decree of the district court be, and the same is hereby, in all things affirmed, with costs," after the words "ordered, adjudged, and decreed,"
410 where the latter first appear in said decree, and substituting in the place and stead thereof the words "that the libel filed in this cause be, and the same hereby is, dismissed, with costs; and the clerk of this court is hereby directed to so amend said decree, and also the return made by him in this cause to the Supreme Court of the United States.

By the court.

B. LINCOLN BENEDICT, *Clerk.*

Enter. L. B. W., *C. J.*

(Indorsed:) U. S. circuit court, east. district of N. Y. Henry Hentz et al., app'll't, vs. The Steamship Idaho, her engines, &c., app'llees. Copy consent and order amending decree. Owen, Nash & Grey, proctors for app'llees. Filed March 1st, 1875.

Sup. Court U. S. 1874. Octo. term. No. 603. Henry Hentz & al., appellants, vs. The Steamship Idaho, &c., The Liverpool & Great Western Steamship Co. Agreement of counsel & addition to record amending decree of circuit court. Filed 16th March, 1875.

(Indorsement on cover:) No. 136. Henry Hentz & Leonard Spangenberg, junior, appellants, vs. The Steamship Idaho, her tackle, &c., The Liverpool and Great Western Steamship Co., claimants. E. New York, C. C. U. S. Filed 13th October, 1874.

ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 136.

HENRY HENTZ ET AL., LIBELLANTS & APPELLANTS,

vs.

THE STEAMSHIP IDAHO, &C.

1 Supreme Court of the United States.

HENRY HENTZ ET AL., LIBELLANTS & APPELLANTS, *vs.* THE STEAMSHIP IDAHO, &C. } No. 136.

It is hereby stipulated that the opinion of Judge Benedict, of the U. S. district court, in this case, of which a copy is hereto annexed, be printed as part of the record in this case.

N. York, Oct. 30, 1876.

HAMMOND & POMEROY,
Attys. for Libellants & Appellants.
WM. G. CHOATE,
Atty. for Claimants.

2 United States district court eastern district of New York, July 11, 1871.

HENRY HENTZ ET AL. *vs.* THE STEAMSHIP IDAHO, ETC.

BENEDICT, J.

This is a proceeding in rem to recover of the steamship Idaho for the non-delivery of certain cotton valued at some $25,000, which was shipped in that vessel on the 3d day of May, 1869, to be transported from New York to Liverpool. The original shipment consisted of two hundred bales, claimed to have been then owned by Thomas W. Man, who, on the day of the shipment and before any bill of lading was issued, sold the same to Hentz & Co., the libellants, free on board. The bill
3 of lading contained the ordinary contract to deliver the goods to the order of Man, as the shipper. It was signed on the 4th of May, and Man then indorsed on it a direction to deliver the goods to James Finlay & Co., who were agents of the libellants at Liverpool. The steamer duly performed her voyage and delivered her cargo, but of this shipment of cotton only thirty-five bales were delivered to James Finlay & Co. The remaining one hundred and sixty-five bales were delivered to Baring Brothers, acting as agents of W. J. Porter & Co.

For this failure to perform the contract in the bill of lading the libellants now bring this action.

It is necessary here to state but one of the defences set up by the ship, which is that neither Man, who received the bill of lading,
4 nor the libellants, to whom it was transferred, were entitled to the cotton, but that it belonged to Porter & Co., and that the delivery to the true owner on his demand constitutes a defence in this action.

The facts material to this issue are as follows:

In April, 1869, at New Orleans, W. J. Porter & Co., in due course of business and in good faith, advanced to one Forbes a large sum of money upon a bill of lading, which set forth a shipment of one hundred and forty bales of cotton at New Orleans, in the brig C. C. Colson. The bill of lading was in the ordinary form, executed by the lawful master of the Colson, but, in fact, no such cotton had been shipped at the
5 time of its execution. Some few days after the date of the bill of lading, and after the acceptance of the drafts by Porter & Co., Forbes did, however, ship by the Colson one hundred and forty bales of cotton, as and for the cotton described in the bill of lading sent to Porter & Co. This cotton was duly delivered to the Colson, was re.

ceipted for by the officers of the brig, and, although not then placed on board, was delivered to the vessel on the wharf alongside, and, in my opinion, duly shipped as cotton to be transported and delivered according to the bill of lading which the master had already signed.

By this shipment the title to the one hundred and forty bales so shipped passed to Porter & Co., who had advanced upon the faith of such a shipment, and held the bill of lading which set forth the ship-
6 ment in question, (12 Pick, 314, Halliday v. Hamilton, 11 Wall., 560.) Subsequent to this shipment, and on the same day before the cotton was taken into the hold of the brig, Forbes accomplished its removal from the custody of the brig and its shipment on the steamship Lodona, lying near and bound for New York. The previous shipment of the cotton on the Colson was unknown to the officers of the Lodona, and they of course issued bills of lading in the ordinary form for the cotton they received.

Forbes, it seems, shipped in the Lodona twenty-five other bales, and took one bill of lading for the whole one hundred and sixty-five, on which second bill of lading he obtained a large advance from the
7 firm of Schaefer & Co., of New York, to whom he made a second assignment of the cotton.

An issue has been raised as to the identity of the cotton shipped in the Colson with that shipped on the Lodona. But the weight of the evidence is that the same one hundred and forty bales delivered to the brig went to the Lodona and were included in the bill of lading for one hundred and sixty-five bales which was sent to Schaefer & Co. Were the direct evidence upon this point less conclusive than it is, I should still be of the same opinion, because of the dealing of Schaefer & Co. with the cotton after it was delivered to them from the Lodona in New York. It appears that the Lodona arrived in New York on the
8 29th or 30th of April. The one hundred and sixty-five bales were taken directly to a warehouse by Schaefer & Co., who, on the 1st of May, engaged freight in the Idaho for two hundred bales of cotton. On the same day, Saturday, Schaefer & Co. sent for one Corcoran, who went to Schaefer's house on Sunday, and was then directed, as he says, to remove all the marks and numbers from the one hundred and sixty-five bales, and to re-mark them with marks similar to thirty-five other bales which Schaefer & Co. had stored in West street. Corcoran did this as well as the short time permitted, and on Monday, May 3d, the whole two hundred bales, one hundred and twenty of
9 them marked S. A. L., and eight marked V. O. X., were shipped in the Idaho. This shipment was not made in Schaefer's name, but, while Corcoran was at work on the cotton, it was nominally sold to Man, a clerk of Schaefer's, and it was shipped in the name of Conklin & Davis, grocers, who permitted their names to be thus used and indorsed the ship's receipts over to Man. On the 4th of May, Man applied for and received the bill of lading of the Idaho for the two hundred bales on which this action is brought. Mr. Schaefer testifies that, on the 3d day of May, a bill of sale of the cotton had been given to Man, which, however, is not produced; and it is clear, on the evidence, that
10 any transfer to Man was merely nominal, for the purpose of obscuring the title of the cotton. On the same day Man sold the cotton to Hentz & Co., free on board, but this was also merely nominal. Hentz & Co. were told to ask no questions, and on the 5th or 6th gave their note for the cotton to Man, who paid it to Schaefer, who held it till maturity, and when Hentz & Co. paid the amount of it to Man they obtained Schaefer's guarantee against loss. Man then paid the

money over to Schaefer, who gave him a check for $897.36 as for a difference in price between the sale to Man and Man's sale to Hentz & Co., and Hentz & Co. acted under the direction of Schaefer and Co. in
11 bringing this suit. The statement of these facts, with the additional one that Man, although alive and in New York, is not called as a witness, are sufficient to show the nature of the transaction. And the effort, together with the fact that a few of the original marks on the cotton, which, owing to the shortness of time, escaped Corcoran's knife, were still to be seen, affords support to the direct evidence of the witness, who swears that the cotton shipped on the Colson was carted, on his direction, to the Lodona. Under such a state of facts the presumption arises that the marks on the cotton which arrived by the Lodona would have proved its identity with that shipped on the Colson; otherwise why obliterate instead of carefully retaining them?
12 Everything is to be presumed against the despoiler of evidence.

I find, therefore, as a question of fact, that the one hundred and forty bales of cotton shipped on the Colson, and transferred by bill of lading to Porter, formed part of the one hundred and sixty-five bales received by Schaefer & Co. from the Lodona, and of the two hundred bales shipped in the Idaho under the bill of lading on which this action is brought; and I find, further, that the present libellants are at least chargeable with notice that they were dealing in respect to property of which the title was in dispute. Indeed, the facts of the case and the manner of the witnesses satisfy me that Schaefer & Co. are the real
13 parties in interest here. It is at any rate certain that the libellant's title to the one hundred and forty bales is no better than Schaefer's, and Schaefer had no title as against Porter & Co., to whom the cotton had been shipped by the first bill of lading issued therefor by the master of the Colson.

I am thus brought to consider the question of law which has been so earnestly discussed before me, and to determine whether the delivery of this cotton to Porter & Co., the real owners, is a good defence to the action of the libellants against the steamer.

In several cases courts of common law have held that a delivery by the carrier to the actual owner was a good defence to the action of a shipper whose possession was acquired by fraud. (Bates v. Stanton, 1 Duer, 85; Sheridan v. The New Quay Co., 4 C. B., (N. S.,) 618; 98 Eng. C. L., 618.)

14 I am unable to discover any real ground of distinction in principle between the class of cases referred to and the present case. Fraud has been an important fact in these cases, because, when proved, it showed the shipper to be without title to the property, but the same result should follow if it be shown, in any way, that the shipper has no title. The defence has been sustained by the courts in such cases, not for the purpose of punishing fraud, but because by reason of the fraud the shipper acquired no right to the property.

The sense and justice of things would seem to be that goods held by a carrier should be delivered to him who owns them, and such a
15 delivery protected by the courts.

It certainly would not be equity to compel a carrier to withhold goods in his possession from the actual owner, and deliver them to one not the owner, simply because one not the owner had shipped them. A court of admiralty is a court of equity. It administers the law so as to work justice and advance commerce, and is not bound by technical rules, nor embarrassed by questions as to the forms of action, and no equity requires such a court to hold that the libellant can charge this

steamer with this large sum because she fails to deliver to them cotton
which, if it had been delivered to them, they could not have *at-*
16 *tained* as against Porter & Co., who actually received it.

The libellants have sustained no damage by the non-delivery. Suppose no delivery of the cotton at all had been set up, and the proceeds of the stipulation for value had been permitted to be paid into the registry under this very libel, it is doubtful whether the libellants could, in that event, have resisted successfully a petition by Porter & Co. that the value of the cotton be paid them out of such proceeds, based on the facts here proved. I do not see why the claimants should be in a worse position because they have undertaken to prove and have proved Porter's right to the property. Another consideration has been urged which seems to me entitled to weight as bearing upon this
17 question, which is, that every shipper of goods, by implication, warrants his right to ship the goods in the capacity which he assumes. Such a warranty is necessary for the ship, and accordingly a breach of it by the shipper may be set up in any action brought by him against the ship.

There are other general considerations bearing upon the subject, sufficiently obvious indeed, but which may perhaps be mentioned.

A rule which forbids a ship to dispute the title of a shipper makes ships the unwilling but most convenient receivers of goods held by doubtful titles. It encourages holders of such property to endeavor to procure a title by the simple expedient of a shipment in a ship;
18 it indicates a speedy and safe method of concealment for such goods while in the country and insures their prompt removal to foreign lands; and it places vessels, whose punctuality and dispatch have become indispensable to modern commerce, in positions of great embarrassment, against which they have no effective method of protecting themselves. The contrary rule works no injustice, for the burden of proof is upon the ship, and the lien, which by the maritime law attaches to her, always affords the shipper abundant security, and security for its value is all that the law is able to afford in any case of disputed title to property of this description.

In accordance with these views I must sustain the defence which the claimants have interposed.

19 In the remarks which I have made I have not intended to intimate that Messrs. Schaefer & Co. were in any way concerned with Forbes in his frauds, nor have I made it a ground of my decision that they became a party to the fraud by their subsequent acts in concealing the cotton in the way I have described. Schaefer & Co. undoubtedly advanced their money in good faith upon the bill of lading of the Lodona, but when they found a question raised as to their right to the cotton, they yielded to the temptation afforded by the rule which their advocate has sought to invoke: they obliterated the marks, mingled the bales with others, and caused its shipment in this steamer, in the hope thereby to place the cotton in a foreign port, where the
20 bales could with difficulty be identified and their right to it would be likely to pass challenge. In my opinion they should take nothing by such action.

I have thus far treated this case as if no other cotton was involved except the one hundred and forty bales shipped in the Colson; but the bill of lading sued on calls for two hundred bales, of which only thirty-five have been delivered to James Finlay & Co. The orignal transfer from Forbes to Porter & Co. was of one hundred and forty bales only.

These bales had been marked and numbered before they were shipped

on the Lodona, and with them, in the same bill of lading, were twenty-five bales, making the one hundred and sixty-five bales consigned
21 to Schaefer & Co. After Schafer & Co. received the one hundred and sixty-five bales, they so dealt with the marks as to make it impossible to identify the twenty-five bales, which were added by Forbes to the bales shipped by the Colson. They also, afterwards, added thirty-five other bales from cotton of their own stored in West street, making two hundred bales, and all again were marked with new marks.

Upon the arrival of the two hundred bales in Liverpool, by an agreement between the consignees of Hentz & Co., the agents of Porter & Co., and the steamer's agent, the shipment was divided, and one hundred and sixty-five delivered to Porter and thirty-five to Finlay. By that arrangement all parties are bound, and the delivery and accept-
22 ance of the thirty-five bales must be held to be a performance of the bill of lading, so far as that number of bales is concerned. The libellants claim further, however, that in any event they are entitled to a decree for twenty-five bales, inasmuch as Porter's title, derived from the shipment of the cotton in the Colson, was confined to one hundred and forty bales.

On the other hand the claimants say that Porter demanded and received the whole one hundred and sixty-five bales as his property, and that they have proved a state of facts which they insist made him the owner of the whole one hundred and sixty-five bales which came by the Lodona. Here again I must decide in favor of the claimants.
23 The fact is unquestioned that Schaefer & Co. purposely mingled the bales to prevent identification. They had possession of the two hundred bales for three or four days in New York, and their agent removed the marks. It would have been easy for them to have maintained the difference in marks which existed when they received the cotton, and then easy for them to have pointed out what bales other than those from the Colson were shipped on the Lodona; but they never attempted to do so; on the contrary, they have sought to make the confusion of marks work in support of their possession of the goods, and now insist here that the bales cannot be distinguished, and there-
24 fore they claim a decree for all. But the law declares that one who intentionally mingles goods of his own with another's for the purpose of concealment and to prevent tracing the property must lose the whole.

The acts of Schaefer & Co. in regard to the twenty-five bales in question must be followed with the consequence which the law attaches to such acts, and I must hold that, when the one hundred and forty bales shipped by the Colson and the additional bales were confused and mingled as they were to prevent any identification, the whole became the property of Porter & Co., and they thereby acquired the right to receive the one hundred and sixty-five bales which were delivered them
25 by the steamer. The libellants must therefore fail to recover for any portion of the cotton delivered to Porter and Co. in Liverpool, and a decree must be entered dismissing the libel with costs.

Emott, Hammond & Pomeroy, for libellants.

Owen, Nash & Gray and Wm. G. Choate, for claimants.

(Endorsed:) Sup. Court U. S., October term, 1876. No. 136. Henry Hentz & al. vs. The Steamship Idaho, &c. Stipulation and copy of opinion. Filed 31st October, 1876.

Supreme Court of the United States.

No. 136.

HENTZ & SPANGENBERG

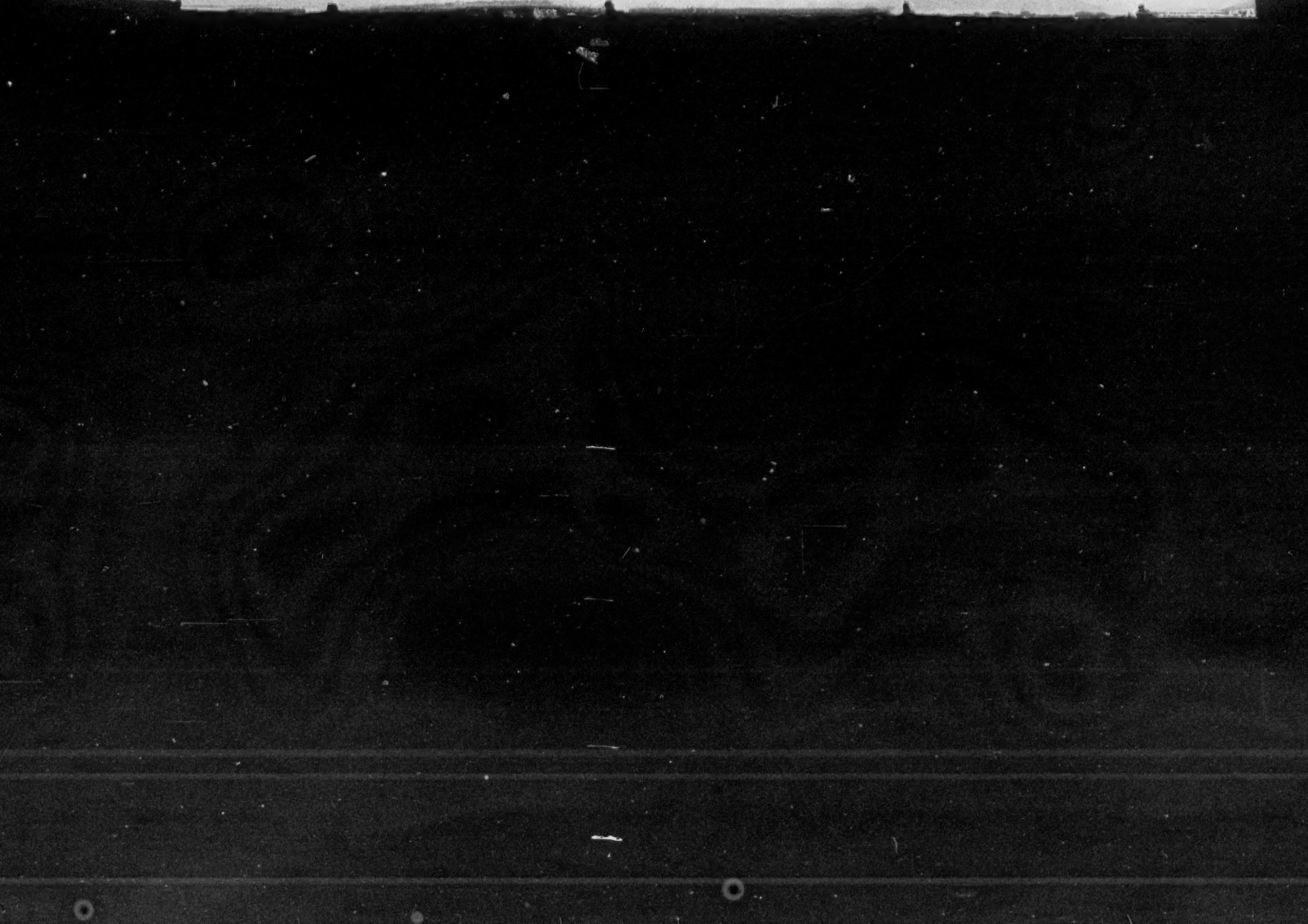
vs.

THE STEAMSHIP IDAHO, THE LIVERPOOL, AND GREAT WESTERN STEAMSHIP CO., CLAIMANTS.

BRIEF OF COUNSEL FOR APPELLANTS.

R. T. MERRICK, *For Appellant.*

Judd & Detweiler, Printers.



Supreme Court of the United States.

No. 136.

HENTZ & SPANGENBERG

vs.

THE STEAMSHIP IDAHO, THE LIVERPOOL, AND GREAT WESTERN STEAMSHIP CO., CLAIMANTS.

BRIEF OF COUNSEL FOR APPELLANTS.

STATEMENT OF CASE AND ISSUES.

This is an appeal from the decision of the circuit court of the United States for the eastern district of New York, affirming the decision of the district court dismissing the libel of appellants filed against the steamer *Idaho*, for the non-delivery of one hundred and sixty-five bales of cotton.

On the 4th of May, 1869, Thomas W. Mann shipped on the steamer *Idaho*, for Liverpool, two hundred bales of cotton, containing 89,736 pounds; one hundred and twenty bales marked S. A. L., and eighty bales marked V. O. X., and received a bill of lading therefor.

Bill of Lading, Record, p. 175.

Thomas W. Mann sold the cotton to the libelants, (Record, p. 176,) and at their request indorsed the bill of lading to James Finlay & Co., Liverpool.

Record, p. 176.

:eamer sailed May 5th, and on her arrival at Liver-
mes Finlay & Co. demanded the two hundred bales
n for which they held the bill of lading, offering to
ght, but delivery was refused of all except thirty-five
Said thirty-five bales were delivered to and received
James Finlay & Co., but, as specified in the receipt,
; prejudice to the right to recover the remaining
ıdred and sixty-five bales according to the bill of

Record, pp. 12 and 147.

The said one hundred and sixty-five bales were delivered to Baring Brothers & Co., by order of William J. Porter, of New York.

Record, p. 148.

Two defences are interposed by the Liverpool and Great Western Steamship Company, claimants, and set out in the answers to the libel.

Record, pp. 11, 12, 13 and 14.

These defences are:

1*st.* That in a proceeding instituted by one William J. Porter, in the supreme court of the State of New York, on the 4th day of May, 1869, against Robert C. Cutting, the master of said steamship *Idaho*, to recover possession of said one hundred and sixty-five bales of cotton, the sheriff, by virtue of his office, seized the same, took it from the possession of the said Cutting, and delivered it to said Porter; and that said Porter, after such taking and delivery to him by the sheriff, employed the claimants, as owners of the steamship *Idaho*, to take said cotton to Liverpool for *him*, the said Porter, which the claimants did, under and in pursuance of such employment.

2*d.* That the libelants had no right, title, or interest in said cotton, nor any right to the possession thereof, but that

William J. Porter was the true and lawful owner of the same, and entitled to the possession thereof; and that Thomas W. Mann, the vendor and assignor of libelants never had any right or title in and to said one hundred and sixty-five bales of cotton.

The answer then proceeds to show the title of said William J. Porter to 140 bales of the said lot of 165 bales, but as to the remaining twenty-five bales, rests on the general assertion of title in Porter, and denial of title in the libelants, or Thomas W. Mann, their vendor and assignor.

Record, p. 14.

ABSTRACT OF PROOF OFFERED UNDER THE ISSUES MADE IN THE CASE.

UNDER THE FIRST ISSUE.

Affidavit of Robert W. Brown as to William J. Porter's claim of title to 165 bales of cotton, alleged to be in possession of Robert C. Cutting, master of the steamship *Idaho*, with requisition to the sheriff indorsed thereon, dated May 4th, 1869.

Record, pp. 183, 184.

Summons in case of William J. Porter *vs.* Robert C. Cutting to recover possession of said cotton, dated May 4th, 1869.

Record, p. 174.

Bond for plaintiff, dated May 4th, 1869.

Record, pp. 185 and 186.

Appearance of Owen, Nash & Gray for defendant, May 5th, 1869.

Record, p. 179.

Claim of the Liverpool and Great Western Steamship Company to the said cotton on the ground of special ownership thereof and title thereto, May 5th, 1869.

Record, p. 183.

Affidavit of William H. Guion, setting forth that he is agent in New York of the Liverpool and Great Western Steamship Company; that the cotton of which the sheriff of New York, under the requisition of plantiff in the case of Porter *vs.* Cutting, has taken possession, is on board the steamer *Idaho*, of which said company is the owner; that the same was shipped and put on board by W. T. Mann, of the city of New York, *as his own*, and that bills of lading therefor have been issued on behalf of the steamer and her owners, which are outstanding as obligations of the said steamer and owners; and that said company, as carriers, in possession of said cotton, had a special property therein. Dated May 5th, 1869.

Record, p. 183.

Bond in the penal sum of $42,900, indemnifying the sheriff against the claim of the Liverpool and Great Western Steamship Company, in consideration of the delivery of said cotton to William J. Porter, the plaintiff. Dated May 5th, 1869.

Record, p. 187.

Sheriff's return to requisition, setting forth that on the 4th day of May he took possession of 165 bales of cotton, described in the affidavit of Robert W. Brown, and which were on board the steamer *Idaho;* that on the 5th of May the notice and affidavit on behalf of the Liverpool and Great Western Steam Company were served on him, and that thereafter the plaintiff delivered to him said bond of indemnity in such case required by the 216th section of the code; and thereafter, on the same day, the attorneys for the respective parties having signed a consent to that effect, he released

the steamer, and delivered the cotton to the defendant. Return dated December 29, 1870.

Record, p. 183.

Consent signed by the counsel of the respective parties, viz: The Liverpool and Great Western Steamship Company, and Porter, that the sheriff might release the *Idaho*.

Record, p. 188.

Agreement between the Liverpool and Great Western Steamship Company and the attorneys of William J. Porter.

Record, p. 188.

This agreement is as follows:

New York Supreme Court.

WILLIAM J. PORTER,
vs.
ROBERT C. CUTTING.

Whereas the plaintiff claims the cotton in this action under bills of lading signed at New Orleans, by the master of the brig *C. C. Colson*, and alleges that said cotton is on board the *Idaho*, of which defendant is master, now about to sail for Liverpool; and whereas bills of lading have been signed for all the cotton on the *Idaho*, which are probably in the hands of third parties: Now, therefore, it is agreed that to save the expense of unloading the cargo of the *Idaho*, the cotton claimed herein shall be considered as having been actually taken out of the vessel by the sheriff, and held by him until an undertaking be given under section 216th of the Code, on a claim of property by a third person, and, on the plaintiffs giving the indemnity provided by that section, the Liverpool and Great Western Steamship Company, the owners of the *Idaho*, will hold the said cotton as shipped by the plaintiff, deliverable in Liverpool to his order on payment of freight.

NEW YORK, *May* 5, 1869.

Liverpool and Great Western Steam Company,
WILLIAMS & GUION, *Agents.*
OWEN, NASH & GRAY, *Attorneys.*
PRICHARD, CHOATE & SMITH,
Attorneys for Plaintiff.

The case of Porter and Cutting was instituted on the 4th of May, 1869, and the aforegoing agreement was entered into during the morning of the 5th, and the steamer sailed at about two p. m., on that day.

Record, p. 20.

Notice of these proceedings was not given to Mann who had received the bill of lading from the *Idaho*, nor was notice thereof given to Mann's assignees of the bill, the libellant in this case.

Guion, one of the agents of the company, called to see Adolphus C. Schaffer, from whom Mann had purchased the cotton, after four o'clock on the evening of the 4th of May, but did not see Mann, and gave notice to neither him nor his assignees, of the institution of the suit or of the pretended seizure of the cotton by the sheriff, or of any agreement or purpose on the part of the owners of the *Idaho* to carry said cotton for or on account of any other person then the holder of the bill of lading given to said Mann.

Record, p. 20.

The owners of the *Idaho* were indemnified against any claim under the bill of lading issued to Mann, and on which this suit was instituted.

Letter of Williams & Guion to Messrs. Guion & Co., Liverpool, dated at New York, May 5, 1869.—Record, p. 148.

UNDER THE SECOND ISSUE.

Title of W. J. Porter.

On the 1st day of April, 1869, Waddy Thompson was the agent of John C. Forbes, both of them being in New Orleans.

On said 1st of April a bill of lading was signed by one Julius A. Pratt, as master of the brig *C. C. Colson*, then lying at the port of New Orleans, for 139 bales of cotton, which are described in said bill of lading as follows:

O. 63	lbs.	30,874
F. 26	"	12,384
L. 36	"	18,047
O. 14	"	6,707
139	lbs.	68,012

Record, p. 34.

This bill of lading was made to the order of J. C. Forbes or his assigns, and, by its terms, the cotton was to be delivered at the port of Liverpool.

On said 1st day of April Waddy Thompson addressed a letter to W. J. Porter & Co., New York, enclosing said bill of lading to said firm, and informing them that Forbes had drawn against it in favor of himself for $5,000 and also for $6,243.27, and stating that the latter draft was to make up balance due said firm on previous account, at the same time giving statement of account, showing balance due thereon of amount equal to amount of said second draft.

Record, p. 30.

The draft for $5,000 was paid by Porter & Co. on the 5th

day of April, 1869. The draft for $6,243.27 was received by Porter & Co., but no money paid thereon.

Record, pp. 23, 31.

On the 3d of April, 1869, Waddy Thompson advised Porter & Co., by letter from New Orleans, that Forbes had on that day drawn against the bill of lading sent forward on the 1st April another draft in his own favor for $4,000.

Record, p. 31.

The draft went forward, and was paid by Porter & Co. on the 7th of April.

Record, pp. 23 and 31.

On the 8th of April, 1869, Waddy Thompson enclosed to Porter & Co., New York, an invoice of 140 bales of cotton per brig *C. C. Colson*, shipped by J. C. Forbes to Liverpool, together with weigher's certificate, and also bill of lading for one bale. The invoice specified the quality of the cotton shipped, as follows:

O., 1–63, 63 B. C., low m'd'g	28,900
F., 1–26, 26 B. str. good ordn'y	12,140
L., 1–35, 35 B. good ordn'y	16,699
S., 1–16, 16 B. ordinary	7,223
140	64,962

The weigher's certificate designates the weight of each respective bale in the respective classes, as indicated by the letters "O., F., L., and S."

Record, pp. 32 and 33.

At the time the bill of lading was given and sent forward, and the draft above referred to made, Forbes had no such cotton as that described in said bill, and there was no cotton on board the brig *Colson*.

Record, pp. 41, 43, and 66.

On the 7th of April, Waddy Thompson purchased from H. W. Farley & Co., in New Orleans, for account of John C. Forbes, 140 bales of cotton.

Record, p. 45.

The contract for the purchase appears to have been made on the 5th of April.

Record, p. 66.

On the 8th of April, these 140 bales of cotton, weighing 64,962 pounds, and described in the invoice above referred to, but not described in the bill of lading given on the 1st of April, were taken to the levee opposite to which the brig *Colson* was lying, and unloaded upon the wharf. They were deposited within forty feet of the brig, and not within reach of her tackle. The brig was then lying outside of another vessel, which lay between her and the wharf.

Her tackle were adapted to reach to the staging on which cargo for the *Colson* had been deposited.

Record, pp. 41 and 43.

The cotton was unloaded from the trucks, and the mate of the *Colson* gave the ordinary receipts, which the truckmen required, to return to the shipper's press from which the cotton was brought.

Record, pp. 42, 77, 78, 79.

The truckmen were in the employ of the shipper's press.

Record, p. 39.

And the receipts were delivered by them to the shipper's press in due course of business.

Record, p. 40.

The cotton was never placed on board the *Colson*, but on the afternoon of the same day upon which it had been unloaded on the wharf it was carried away by the order of

John C. Forbes, who stated to the mate, who had given to the truckmen the receipts above referred to, that "he intended to ship it by another vessel."

This officer states that he does not know where it was carried.

Record, pp. 41 and 43.

Patrick Ryan testifies that he was employed by Forbes, on the 8th of April, to remove 140 bales of cotton from the wharf at which the *Colson* was lying to the steamer *Lodona*, then lying at New Orleans and bound for New York, and that he did remove the same on that day to said last-named steamer accordingly.

Title of Libelants.

On the 9th of April J. C. Forbes shipped on the steamer *Lodona*, at New Orleans, for New York, 165 bales of cotton, weighing 71,900 pounds, and described in the bill of lading given by the *Lodona*, as marked with letter "T" in a diamond, and weighing 71,900 pounds.

Record, p. 18.

Bill of lading. (Record, pp. 176 and 177.)

This bill of lading was endorsed by Forbes to Duncan, Sherman & Co., of New York city, and sent forward to Duncan, Sherman & Co. with two bills of exchange, drawn by John C. Forbes on Adolphus C. Shaffer & Co., dated 9th of April, at sight, one for $7,000 and the other for $10,000.

Record, pp. 177 and 178.

The bills of exchange were presented by Duncan, Sherman & Co. to Adolphus C. Schaffer & Co. with the bill of

lading; and Duncan, Sherman & Co., having indorsed the bill of lading, the bills of exchange were accepted and paid on account of said shipment of cotton.

Record, pp. 164, 165, 167.

On the arrival of the *Lodona*, at New York, the one hundred and sixty-five bales of cotton mentioned in her bill of lading, given to Forbes, on the 9th of April, were delivered to A. C. Schaffer & Co., and made up part of the two hundred bales shipped on board the *Idaho*, which were sold by Adolphus C. Schaffer, to Thomas W. Mann, and for which the bill of lading of the *Idaho*, dated the 4th of May, 1869, was given to the said Mann, from whom libelants derived their title.

Mann was Schaffer's clerk, and also did business on his own account; he had been an old cotton merchant. Paid Schaffer for the cotton; he gave him Hentz & Co.'s (the libelants') note.

Record, pp. 165 and 166.

Henry Hentz testifies that he and H. Spangenberg, Jr., composed the firm of Hentz & Co., and that they paid Mann for the cotton 28¼ cents per pound, in all, $25,350.42, and received from him the bill of lading. They bought the cotton free on board, and received the bill of lading on the 4th or 5th of May, and the payment was part cash and part in note. The note was paid at maturity.

Record, pp. 16 and 17.

The following schedule contains a statement of the several bills of lading issued by the *Colson*, and which had been passed to William J. Porter & Co.:

EXHIBIT Y.—(Record, p. 99.)

Schedule A, showing bills of lading held by Porter, annexed to and referred to in libel in Porter vs. *Brig Colson*, 9410.

Date.	No. of bales.	Marks.
April 12, 1869	141	J. C. F.
March 16, 1869	150	A. J., 3; B. Z., 59; D. E., 12; E. O., 19; XIX., 40; B. U. D., 2; F. R. S., 13; P. I. N., 2.
April 8, 1869	1	S.
March 16, 1860	107	C. V., 107.
March 20, 1869	9	D. D., 4; R. K., 5.
March 27, 1869	221	Z., 47; W. 136; T., 32; S., 6.
176 April 8, 1869	1	S.
176 April 1, 1869	139	O., 63; F., 26; L., 36; S. 14.
176 March 14, 1869	65	J. S., 30; S., 15; P. P., 13; J. S., 7.
	834	

The *Colson* had issued a number of other bills of lading for cotton, in addition to those mentioned in the aforegoing schedule, and which had been passed to different parties. Among these bills of lading one of them was indorsed by J. C. Forbes to S. C. Schaffer & Co., dated March 24th, 1869, for 121 bales of cotton, weighing 52,124 pounds.

Record, p. 124.

Schaffer was one of the sufferers from the frauds of Waddy Thompson and J. C. Forbes, holding some of the bills by the *Colson*.

These frauds became known sometime in April, 1869, and were discussed in the public press, and it was understood that the *Colson* was short 800 or 1,000 bales of cotton.

Record, p. 165.

Only 464 bales of cotton were put on board.

Record, pp. 87, 89, 90.

The *Colson* was seized, May 11th, 1869, at New Orleans,

by the marshal of Louisiana, under an execution issued on a judgment in favor of the United States against J. C. Forbes.

The *Colson* was owned by Forbes & Thompson, but registered in the name of one F. H. Page.

Record, pp. 120, 121.

The proposed voyage of the *Colson* was broken up by the seizure of the marshal, if any such voyage was *really* ever intended to be commenced or *completed.*

Forbes and Thompson have disappeared.

George Barker (Record, p. 121) testifies that he was employed by Forbes as captain of the brig *Colson*, and that Forbes & Thompson wished him to take the ownership of the vessel. Subsequently she was put in the name of F. H. Page. He says: "Thompson, while I was captain, made application to me to sign bills of lading *for cotton not on board, which I declined.* The last application of this kind made by Thompson, and declined by me, resulted in Captain Pratt taking my place as captain of the vessel. At the time that these applications were made by Thompson, and declined by me, Forbes (John C.) was standing near by, and remarked to me when I declined, '*now you have spoiled everything.*' * * After that, Pratt was employed as master of the brig."

The bills of lading were all signed by Pratt.

Assignment of Errors.

1. The court erred in not deciding that the execution by the sheriff of the writ of replevin, was not a sufficient execution of said writ, or requisition, under the laws of New York, and that the goods pretended to be seized thereunder were not *in custodia legis.*

2. The court erred in deciding that a carrier could interpose the right of a third party as a defense in a proceeding against him by the party holding the bill of lading for non-delivery of the goods.

3. The court erred in not deciding that the agreement of the carrier to hold the goods for William J. Porter & Co. and transport the same on their account, and deliver them to the order of said firm, and the actual transportation thereof accordingly to a foreign jurisdiction, without notice to the shipper, constituted a fraud upon the shipper and the holder of the bill of lading, and could, under no circumstances, relieve the carrier from his responsibility on the bill of lading.

4. The court erred in deciding that a delivery of the goods to the true owner relieved the common carrier from liability on the bill of lading, in the absence of proof that the possession of the goods had been feloniously or fraudulently obtained by the shipper.

5. The court erred in deciding that a delivery of the goods to the true owner protected the carrier from liability on his bill of lading, in the absence of proof that the carrier had, promptly and before changing his relation to the goods as the bailee of the shipper, given notice to the shipper of such claim of adverse ownership.

6. The court erred in deciding that the cotton delivered to Schaffer & Co. on the bill of lading of the *Lodona* was the identical cotton that had been placed on the wharf at which the *Colson* was lying, in New Orleans, on the 8th of April, 1869.

7. The court erred in deciding that a bill of lading executed by the *Colson* before the cotton was placed on board could, under the laws of Louisiana, be made valid by a sub-

sequent delivery of the cotton, so that such bill of lading could pass the title thereto.

8. The court erred in deciding that the delivery of the cotton by the servants of the Shippers' Cotton Press Company to the officers of the *Colson* was such a delivery on board of said brig as would operate to effect a delivery to the assignee of a bill of lading dated seven days before, and at a time when the shipper did not own any such cotton as that described in said bill.

9. The court erred in deciding that at the time of the delivery by the Shippers' Cotton Press Company of the 139 bales of cotton on the wharf, at New Orleans, on the 8th of April, the same was delivered *as and for the cotton mentioned in the bill of lading dated April 1st*, and that there was any direction that the same shall be transported and delivered according to the agreements in said bill of lading, and in execution thereof.

10. The court erred in deciding that under all the circumstances of this case the title to the cotton in question had passed to William J. Porter & Co.

11. The court erred in not deciding that by the indorsement of the bill of lading of the *Lodona* the valid title to the cotton in question passed to A. C. Schaffer & Co.

12. The court erred in deciding that there was such a confusion of goods shown by the evidence, as would entitle William J. Porter & Co. to a delivery of any more cotton than was called for by the *Colson's* bill of lading of the 1st of April, 1869.

13. The court erred in refusing the relief asked by the libelant, and in dismissing the libel.

ABSTRACT OF ARGUMENT AND MEMORANDUM OF AUTHORITIES.

1. THE REPLEVIN PROCEEDINGS WERE IRREGULAR AND INSUFFICIENT; THE PROPERTY WAS NOT *in custodia legis*, AND THE TRANSACTION CONSTITUTES NO DEFENCE IN THIS CASE.

The sheriff, in point of fact, never seized the cotton, or took it into his possession, under the replevin proceeding.

(*a.*) To constitute a valid levy the officer must take possession of the goods, if that be practicable; and, in any event, the goods must be *within view of the officer*, and he must openly assert his title by virtue of the writ.

Roth *vs.* Wells, 29 N. Y., 471.
Bond *vs.* Willet, 31 N. Y., 102.
Barker *vs.* Bininger, 14 N. Y., 270.
Ray *vs.* Harcourt, 19 Wend., 495.
Rorer on Judicial Sales, 329, *and notes.*

Such control must be exercised as if done without the levy would be a trespass.

Cases above cited.
Westvelt *vs.* Pinckney, 14 Wend., 123.
Harely *vs.* Lowry, 30 Ill., 446.
Carey *vs.* Bright, 58 Penn St., 70.

In this case it appears that the carrier and the attorney for the plaintiff in the replevin, together, on the 5th May, 1869, agreed—"that to save the expense of unloading the cargo of the *Idaho*, the cotton claimed *shall be considered as actually taken out of the vessel by the sheriff;*" and that upon the plaintiffs filing bond, "the owners of the *Idaho* will hold the said cotton as shipped by plaintiff, deliverable in Liverpool, to his order."

The sheriff not having, in fact, actually taken the cotton into his possession, could never have delivered it to Porter.

It was agreed by the owners of the ship to *consider* the seizure as having been made,—to *consider* the delivery to Porter as having been accomplished, and to recognize Porter's title,—and, without contest and without notice to the shipper, to deliver the cotton in Liverpool, to Porter's order.

The carrier had no authority to make any such agreement. It was a fraud on the rights of the shipper and a conversion of the property by the carrier.

(*b.*) Under § 211 of the Code of Proceedure of New York, "a sheriff who takes property in the action, which is substituted for the old action of replevin, is bound to retain it in his custody for *three days*, to enable the defendant to secure its return."

The section referred to is as follows:

"At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound, in double the value of the property as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the defendant. If a return of the property be not so required within three days after the taking and service of notice to the defendant, it shall be delivered to the plaintiff, except as provided in section 216."

This section is construed and applied in:

McCann *vs.* Thompson, 13 Hd. Prac. R., 380.
Graham *vs.* Wells, 18 Hd. Prac. R., 376.

The carrier was bound to notify the shipper, and give him

the opportunity of furnishing the bond required by the section quoted, and thereby obtaining a return of the cotton.

Or, the carrier should have remained passive and indifferent, and allowed the sheriff to take the cotton out of the ship, and then notified the shipper in order that he might protect himself by such proceedings as he should deem best in the premises.

The action taken by the carrier deprived the shipper of a right given him by the laws of New York, which action was in no way constrained by the claim of ownership set up by Porter, or by the legal proceedings he had instituted, but was purely voluntary on the part of the carrier, and manifestly designed for purposes of his own convenience, benefit and advantage, without regard to the interest or wishes of the shipper.

Prompt notice to the bailor, of legal proceedings affecting the property, is necessary in every case to make such proceedings a valid defence in an action against the carrier by the shipper.

Bliven *vs.* Hud. Riv. R. R., 36 N. Y., 403.

The Schooner Mary Ann Guest, *Olcott's Rep'ts.*, 501.

It is said in the opinion in the case cited that the court "*puts this case upon the doctrine* that the common carrier is exonerated from his obligation to his bailor where the property is taken from him by due legal process, *provided the bailor is promptly notified of such taking*," (p. 407.)

If such notice is necessary in any case it certainly should be required where the proceeding is *in rem.*, where the *actual* possession of the carrier is not disturbed, and where the carrier proposes to recognize the adverse claim, and, on contract with the claimant, to take the property beyond the jurisdiction in which he has received and holds it, and within which the shipper resides.

2. A CARRIER CANNOT SET UP A NAKED JUS TERTI OR ADVERSE TITLE OF A HOSTILE CLAIMANT AGAINST HIS SHIPPER, NOR SHOW AS AN EXCUSE FOR NON-DELIVERY ACCORDING TO THE TERMS OF THE BILL OF LADING, THAT HE HAS DELIVERED THE GOODS TO THE TRUE OWNER.

Story on Bailments, 8th ed., §§ 266, 450, 582.
2d Story Eq. Juris., § 817.
Dixon *vs.* Hammond, 2 B. & Ald., 310.
Roberts *vs.* Ogelby, 9 Price, 269.
Gosling *vs.* Bernie, 7 Bing., 338.
Burton *et al. vs.* Wilkenson *et al.*, 18 Vt., 186.
Gerbur *vs.* Monie, 56 Barb., 659.
Barnard *vs.* Kobbe, 3 Daly, 376.

In the case of the *Thames*, (14 Wall., 107,) though this particular point was not directly before the court, Mr. Justice Strong, speaking of delivery to a party who was not the owner, says, in the opinion: "By using bills of lading for the cotton, stipulating for a delivery to order, the ship became bound to deliver it to no one who had not the order of the shipper."

The carrier "had no right, under any circumstances, to deliver to a stranger."

Formerly a rule, differing in some extent to that above laid down, was recognized by some of the courts of this country and England, but the rule as above stated is now recognized as the general rule, subject to the following exception, viz: That where it is shown *that the shipper acquired possession of the goods shipped fraudulently, or feloniously, a delivery by the carrier, to the true owner, would be a valid defence in an action against him by the shipper.*

The following cases are of this character, and by illus-

trating the *exception*, and resting upon it as an *exception*, they approve and confirm the general rule.

Basset *vs.* Spofford, 45 N. Y., 387.
King *vs.* Richards, 6 Whart., 418.

The general rule is obviously correct, for bills of lading being written contracts, negotiable by indorsement, and constituting a large portion of that mass of securities upon the faith of which commercial transactions are conducted, any rule by which their validity would be rendered questionable, in the hands of *bona fide* holders, in cases where they have been regularly issued, would create a degree of uncertainty and distrust calculated to produce infinite mischief.

Mr. Justice Hunt, in his opinion in this case, [Record, p. 203,] concedes the rule to be, "that a carrier cannot set up, against the shipper, a naked *jus tertii* or adverse title of an hostile claimant," but says, that this rule is subject to the following, among other qualifications, to wit: "*That the carrier still holds the goods in his possession.*"

The defence of the carrier in such cases rests upon the right of the claimant to receive the goods, and it is difficult to perceive any difference in the strength of this defence, whether interposed after delivery has been actually made to the claimant, or before delivery, and when the carrier has been notified of the hostile claim. If he delivers to the claimant he does so because it would be unlawful for him to deliver to any one else; and hence when any other person demands the goods of him, it would be unlawful for him to deliver to the person so demanding. He ought certainly, therefore, upon this theory, to be allowed to interpose the title of the hostile claimant, when he has not delivered, and answer the demand by saying he holds the goods for the rightful owner.

It is true, the cases to which his Honor refers are cases in which the carrier still holds possession of the goods, but

they do not rest on the suggested qualification of the general rule, but on the just application of the general rule itself.

3. THE COTTON IN QUESTION WAS NOT DELIVERED TO THE TRUE OWNER, THE TITLE TO SAID COTTON AND RIGHT OF POSSESSION BEING IN THE LIBELANTS, AND NOT IN WM. J. PORTER & CO.

It is conceded that both Schaffer and Porter were equally innocent, and acted in equally good faith in advancing on the bills of lading issued by the *Colson* and the *Lodona*, respectively.

(*a.*) The assignment of the *Lodona's* bill of lading of April 9th, 1869, for 165 bales of cotton to S. C. Schaffer & Co. for a valuable consideration vested the title to said cotton in the assignee. The cotton was accordingly delivered to said assignee when the *Lodona* arrived at her port of destination. The burden of proof is, therefore, on the defendant to invalidate this title.

The claim of the defendant is, that the *Colson's* bill of lading of the first of April, 1869, for 139 bales of cotton, weighing 68,072 pounds, and all of one grade, issued when the master of the vessel had not received any cotton, and the shipper did not own any, will pass the title to 140 bales, weighing 64,962 pounds, of four different grades, on the ground that the said 140 bales were brought down to the wharf where the *Colson* was lying seven days after the date of her bill of lading, and receipted for by the officer of the vessel to the truckmen by whom it had been brought down, simply as so much cotton deposited by them on the wharf. This claim is thus made, *notwithstanding* the fact that no instructions whatever were given to such officers in regard to said cotton by the owner, and no specific appropriation

thereof made by any body to any purpose, whilst the same remained at the wharf; and *notwithstanding* the further fact that said cotton was, before any attempt made to load it, or any direction given that it should be loaded, and within a few hours after it was placed at the wharf, removed therefrom by the owner, with the acquiescence and consent of the master, and shipped on board another vessel under a bill of lading, duly and regularly issued, describing it correctly in weight and grade, and delivered by such vessel to the assignee of said bill of lading, who had made advances thereon in *good faith and without notice of any claim whatever against the shipment.*

(*b.*) The bill of lading given by the *Colson*, to J. C. Forbes, for 139 bales of cotton, when, in point of fact, no such cotton had been put on board, and no such cotton was owned by said Forbes, was an illegal paper which the master had no authority to execute, and could transfer to the assignee of Forbes no property, there being no property to which the bill could apply; but, in such case, the remedy of the assignee would be an action for fraud against the master, and against Forbes.

Lickborrow *vs.* Mason, 2 T. R., 77.
Flander's Law of Shipping, pp. 164, 453.
Grant *et al. vs.* Norway *et al.*, 2 Eng. L. & E., 337.

Under the rule of commercial laws above-stated, if subsequent to the date of the irregular bill of lading, there had been an actual delivery on board by the shipper of cotton answering the description of that specified in the bill of lading, *as and for the cotton therein called for*, and the same had been received by the officer of the vessel *as and for such cotton*, to be carried according to the terms of the bill of lading, that instrument would thereby have become valid. In such case the bill would operate as an executory agreement of the shipper, the master and consignee, and when

executed by the delivery of the chattels on board, they would become the property of the assignee of the bill.

Rowley *vs.* Bigelow, 12 Pick, 307.
Holliday *vs.* Hamilton, 11 Wallace, 560.
Bryan *vs.* Nix, 4 Meeson & W., 775.
1st Parson's Shipping and Adm., 187.

The bill of lading now in question, was not only irregular and illegal under the rules of commercial law, but was, under the statute law of Louisiana, absolutely *void*, and therefore could not operate as a valid executory agreement, and though the cotton might subsequently have been put on board, it would not operate to transfer the title thereto under the doctrine of *relation*.

The statutes of Louisiana, applicable to this subject, are as follows:

"No master, owner, or agent of any boat or vessel of any description, forwarder, or officer, or agent of any railroad, transfer, or transportation company, or other person, shall sign or give any bill of lading, receipt, or other voucher or document for any merchandise or property, by which it shall appear that such merchandise or property has been shipped on board of any boat, vessel, railroad car, or other vehicle, unless the same shall have been *actually shipped and put on board, and shall be at the time actually on board* or delivered to such boat, vessel, car, or other vehicle, to be carried or conveyed, as expressed in said bill of lading, receipt, or voucher or document."

2d Ray's Dig., Stat. of La., sec. 2481, p. 238.

"Any cotton press owner or lessee, or wharfinger, forwarder, or other person, who shall violate any of the provisions of this act, shall be deemed guilty of a criminal offence, and upon indictment and conviction shall be fined in any sum not exceeding five thousand dollars, or imprisonment in the penitentiary of this State not exceeding five years, or both. And all and every person or persons aggrieved by the violation of any of the provisions of this act,

may have and maintain an action at law against the person or persons, corporation or corporations, violating any of the provisions of this act, to recover all damages, immediate or consequential, which he or they may have sustained by reason of any such violation, as aforesaid, before any court of competent jurisdiction, whether such person or persons shall have been convicted of fraud, as aforesaid, under this act or not."

2d Ray's Dig., p. 239, sec. 2483.

Under these statutes the title to the cotton, that might have been put on board subsequent to the date of the bill of lading, could not pass under and by virtue of such bill under any circumstances; but the party holding the illegal bill would, in such case, if the cotton was delivered to him by the vessel, have a paramount claim thereto against the *shipper*, though such claim could not avail against the right and title of the *bona fide* holder for value of a bill of lading of subsequent date, regularly issued, after the cotton was actually on board of the vessel.

(*c.*) The cotton described in the *Lodona's* bill of lading of April 9th, 1869, was never placed on board the *Colson*, and never delivered to the officers of the *Colson*, *as and for* the cotton described in her bill of lading of April 1st, 1869, to be "carried or conveyed, as expressed in said bill of lading."

To give effect to an irregularly issued bill of lading, it is not enough that goods corresponding in character to those described in the bill are subsequently placed on board the vessel; they must be placed on board with the intent, and for the declared purpose, of *a specific appropriation to that particular bill*, and they must be so received by the carrier.

Rowley *vs.* Bigelow, 12 Pick., 313.
1st Parsons on Ship. and Adm., 187.
Lester *vs.* McDowell, 18 Penn., 91.

It is fair to presume where the carrier permits goods

to be taken from his possession, by the owner, without the surrender of an outstanding bill of lading, issued before such goods were delivered, that they had not been appropriated to the purposes of that bill, for if they had been it would become his duty not to allow them to be interfered with.

No appropriation to Porter & Co. of the cotton in question ever took place. If there were any acts looking to such an appropriation, they were interrupted by mutual consent before the appropriation was definitely made.

The master having irregularly signed a bill of lading when there were no goods to answer to it, had the right to consent that goods which were subsequently brought to the vessel by the party to whom the bill was given, should be taken away before they were shipped, and whatever rights might arise as between the holder of the bill and the vessel, the title of a *bona fide* purchaser of the goods could not be affected.

Even if part of the goods had been actually placed on board of the vessel, the title of a bona fide purchaser would be paramount to the claim of the endorsee of the bill of lading previously issued.

Bryans *vs.* Nix, 4 Meeson & W., 775.

There is no evidence that Forbes gave any directions to the officer, of the *Colson* in regard to this cotton; on the contrary, he stated to the master, whilst the cotton was at the wharf, that he *intended to ship it by another vessel*, and thereupon, with the acquiescence of the master, had it removed, and did ship in accordance with his declared purpose.

The only acts in reference to this cotton which are claimed to evidence an appropriation of it to Porter & Co., were, first, the sending it by Forbes' broker to the wharf where the *Colson* was lying; and, second, the giving receipts for it by her officers to the truckmen.

These receipts were not given to Forbes, but to the servants of the Shippers Cotton Press, as vouchers for these servants, to show to their employers as evidence that the cotton had been carted to this wharf, and that they had discharged their duty.

Neither Forbes nor his broker had any connection with these receipts whatever.

If these receipts had been delivered to the shipper, and he had surrendered them to the vessel, and directed the cotton to be loaded, *as and for the cotton called for by the bill of lading already issued*, that would have been an appropriation of the cotton to the holder of that bill of lading.

But as Forbes had no connection with the receipts, if they have any bearing on this question at all, they strengthen the inference, that the owner retained the control of the cotton—for they show on their face, simply, that so much cotton had been placed on the wharf, subject to the owner's orders, and *without any other appropriation whatever*. The *jus disponendi* still continued in the owner, to be subsequently exercised by him.

In the case of *George Woods Rice, et al.*, vs. *Wm. J. Porter, et al.*, in the supreme court of New York, involving a question similar to that involved in this case, and growing out of the transactions between *Forbes* and *Porter*, Mr. *Justice Sutherland* says, in his opinion, as follows:

"But if shipping receipts in the ordinary form and to the ordinary effect, signed by the master or mate of the *William*, were given, and if they had been produced and proved on the trial, there is not a pretence for saying that as between the plaintiffs and the defendants Porter, and Duncan Sherman & Co., as *bona fide* endorsees for value of the bill of lading given by the master of the *Panola*, that such receipts, as well as the bills of lading prematurely given by the master of the William, were not open to explanation by parol evidence; or, that the defendants last-named were estopped, either by such receipts, or, by the bills of lading signed by the master of the William, or both, from showing

the real transaction, and that the 88 bales never were, at any time, shipped on board the William.

"If, then, the shipping receipts of the *William* for the 88 bales had been produced on the trial, and proved to have been signed by the master or mate of the *William*, as between the plaintiffs and defendants last named, they could have shown, in view of the other evidence in this case, and of the conceded facts of the case, nothing more than that the 88 bales in question *were put into the custody of the master or mate of the William for shipment*, and (if the transaction as between Forbes and the master of the *William*, up to the time of the giving of the receipts, was honest, and free from fraud) that they both intended them to be shipped on the *William* when the receipts were given.

"Now, I repeat that an intention to deliver is not a delivery, nor is a delivery to a vessel a delivery on her, nor is *an intention to ship a shipment.*"

In point of fact, Forbes did not *intend* to ship the cotton by the *Colson*, or to load it on board the *Colson*. He had employed Pratt for the express purpose of having illegal and irregular bills of lading issued, which Pratt's predecessor, Barker, had refused to do; and it is manifest that his design was, not to appropriate the cotton to the bill of lading that had already served his fraudulent purpose, but to appropriate it in some other way that would give him more money.

Justice Sutherland, in the course of the opinion above referred to, says:

"If by collusion between Forbes and the master of the *William*, and with a view to carry out some fraudulent scheme between them, the eighty-eight bales had been shipped on her with the understanding or intention that they should be secretly unshipped, and re-shipped on the *Panola*, and they had been so shipped, unshipped, and re-shipped, there certainly would have been difficulty in holding that such a prior shipment on the *William* could have given effect to the plaintiff's prematurely signed and issued bills of lading, as against a *bona fide* endorsee for value of a bill of lading, regularly signed and issued on such re-shipment; and it is difficult to

suppose, in view of the actual shipment on the *Panola*, and the issuing of the bill of lading thereon, *that any prior shipment on the William could have been honest and bona fide, and with the intent that the eighty-eight bales should be carried away by the William.*"

4. IF THE 140 BALES OF COTTON THAT HAD BEEN UNLOADED AT THE WHARF IN NEW ORLEANS, AT WHICH THE *Colson* WAS LYING, WERE, IN FACT, PART OF THE 200 BALES SHIPPED ON THE *Idaho*, FOR WHICH LIBELANTS HELD THE BILL OF LADING, THERE WAS NO SUCH INTERMIXTURE OF SAID COTTON AS JUSTIFIED THE APPLICATION OF THE RULE OF LAW IN REGARD TO A CONFUSION OF GOODS.

The *Idaho* delivered to the order of Porter & Co. 165 bales.

It is admitted that Porter & Co. claimed *title* to only 140 bales, and that the title to the remaining 60 bales was in the libelants as assignees and veendees of the title of S. C. Schaffer & Co.

The court adjudged that Porter & Co. were entitled to receive and hold, *first*, 140 bales on the ground that they were the rightful owners thereof, and, *second*, the 25 other bales on the ground that though they had no claim of ownership thereto whatever, yet, as said 140 bales had been purposely confused by Schaffer with the said 25 bales, Porter & Co. had a right to receive and hold the 25 bales also.

The 165 bales thus delivered to Porter were taken indiscriminately from the lot of 200 bales.

Upon the ground stated, Porter & Co., if entitled to any portion of the shipment over and above 140 bales, were entitled to the whole 200.

The original marks had been removed from all the bales constituting the lot, and Schaffer had substituted for them

his own marks, and shipped them, marked indiscriminately, S A L and V O X.

If the 165 bales that had been shipped by the *Lodona*, could be distinguished from the rest of the lot, why could not the 140 bales that had been unloaded at the wharf of the *Colson* be distinguished as well?

The confusion, if any, of the 140 bales with the 25 bales, that constituted the shipment by the *Lodona* to Schaffer, was made, not by Schaffer, in New York, but by Forbes, in New Orleans.

The entire lot was marked in New Orleans with a T, in a diamond, before being shipped on board the *Lodona*, and was delivered to Schaffer in New York.

Chancellor Kent lays down the rule of law on this subject, and the circumstances under which it is applicable, as follows:

"If A willfully intermix his corn or hay with that of B, or casts his gold into another's crucible, so that it becomes impossible to distinguish what belonged to A from what belonged to B, the whole belongs to B; *but this rule is carried no further than necessity requires;* and if the goods can be easily distinguished and separated, as articles of furniture, for instance, then no change of property takes place. So if the corn or flour mixed together were of equal value, then the injured party takes his given quantity, and not the whole."

2 Kent Com's, 365.
1 Story Equity Juris., § 623.
Lupton *vs.* White, 15 Vesey, 442.
Wood's Inst., 158.
Treat *vs.* Barber, 7 Conn., 280.
Seymour *vs.* Wyckoff, 10 N. Y., 213.

The conclusion to be drawn from the decisions on this

subject is, that to work a forfeiture of right by reason of an intermixture of chattels, a new ingredient must be formed by such intermixture not capable of a just appreciation and division according to the original rights of the respective owners.

Story on Bailment, § 40, pp. 41, 42, 8th Ed.

In this case the cotton was neither spun into yarn, nor woven into cloth.

The bales were not broken.

Porter had an invoice, as he called it, sent to him from Thomson & Forbes, *specifying the weight of each bale*, and *designating the particular grade of cotton contained in each.*

R. T. MERRICK,
For Appellant.

Nearly the entire amount advanced by Porter & Co. had been paid back before this case was brought. [Record p.p. 69-91. 92-97]

JOHN POLHEMUS, PRINTER, 102 NASSAU STREET, N. Y.

Supreme Court of the United States.

HENRY HENTZ *et al.*,
Libellants and Appellants,

vs.

STEAMER "IDAHO," &c., THE LIVERPOOL AND GREAT WESTERN STEAM COMPANY,
Claimants and Appellees.

Brief for Claimants and Appellees.

Statement.

This is an appeal from a decree of the Circuit Court affirming a decree of the District Court for the Eastern District of New York, dismissing the libel, with costs.

The libel was on a bill of lading dated May 4, 1869 for two hundred bales of cotton, one hundred and twenty marked S A L, and eighty, V O X, issued by the claimants, the owners of the "*Idaho*," to Thomas W. Mann, and charges that the ship delivered in Liverpool, under bill of lading, to the libellants, the indorsees of Mann, only thirty-five bales, twenty-one marked S A L, and fourteen marked V O X, and refused to deliver the other one hundred and sixty-five bales. (Libel, fol. 2–4.)

The libellants claimed title to the two hundred bales by purchase from Mann, in whose name they were shipped, according to the bill of lading. (Libel, fol. 3.)

The Answer was—1st. That the one hundred and sixty-five bales not delivered to libellants were taken from the ship by due process of law, in a suit of replevin brought by Porter against the master, and that the owners of the

ship (claimants herein) appeared in the replevin suit and took certain measures for the protection and defense of the holder of the bill of lading, which facts excuse the non-delivery; and that these libellants afterwards appeared in the replevin suit to contest Porter's title.

2d. That Porter was the true owner, and entitled to the immediate possession of the one hundred and sixty-five bales delivered to him on demand; and that neither Mann, the shipper, nor the libellants, ever had any title thereto, or right to the possession. (Answer, fols. 20–25.)

The District Court held in substance that, as to one hundred and forty bales out of the one hundred and sixty-five, Porter had the title; and that as to the remaining twenty-five bales, he was entitled to hold them as against the libellants, on the ground that Schaeffer & Co., under whom Mann and the libellants claimed title to them had purposely intermingled them with Porter's cotton, in order to confuse the title and make good his own possession. (Opinion of Benedict, *J.*, ~~fol. 111~~) addition to Record

The Circuit Court affirmed upon the same grounds. (Opinion of Hunt, *J.*, fols. 377–390.)

Neither Court, therefore, passed upon the other defense set up in the answer—that is, the proceedings in the replevin suit.

THE QUESTIONS UPON THIS APPEAL ARE CHIEFLY THESE:

1. *Whether Porter had a good title to the one hundred and forty bales.*

2. *Whether he acquired the right to hold the other twenty-five bales, by the acts of Schaeffer in mixing the cotton.*

3. *Whether the delivery to Porter, as the true owner, or party entitled to possession, excuses the carrier from delivering it to the indorsee of the bill of lading.*

4. *Whether, if the delivery to Porter as the true owner is not a defense, the proceedings in the replevin suit are so.*

First Point.—PORTER WAS, ON AND AFTER THE DELIVERY THEREOF TO THE BRIG "*Colson*," AT NEW ORLEANS, APRIL 8, 1869, THE TRUE OWNER OF 140 BALES, WHICH WERE PART OF THE 200 BALES SHIPPED ON THE "*Idaho*," AND HIS TITLE WAS NOT DIVESTED BY THE CONSIGNMENT OF THE 165 BALES TO SCHAEFFER & CO. BY THE "*Ladona*," NOR BY THE ALLEGED SALE FROM SCHAEFFER TO MANN, NOR THAT FROM MANN TO THE LIBELLANTS.

1. *The* 140 *bales of cotton were duly delivered on the* 8*th of April, by one Forbes, the shipper, to the brig* "*Colson*," *at New Orleans, as and for the cotton described in a bill of lading therefor, issued by the master of the* "*Colson*," *dated April* 1*st*, 1864, *for* 139 *bales, and another bill of lading for one bale, issued April* 8*th, under which bill of lading Porter claimed title.*

(*a.*) *The facts relating to this shipment are as follows:*

April 1, 1869, John C. Forbes procured from one Pratt master of the brig "*C. C. Colson*," at New Orleans, bound to Liverpool, a bill of lading by that ship for 139 bales cotton, marked O, 63; F. 26; L 36; S 14, deliverable to the order of Forbes, the shipper.

(See copy Exhibit B, N. O. Com., fol. 133.)

April 1, 1869, Waddy Thompson, a commission merchant, of New Orleans, wrote to Porter, at New York advising him of the shipment of 139 bales, inclosing the the bill of lading, endorsed by Forbes, and advising also of Forbes' draft against it of that date, for $6,243.27 and $5,000, and advising, also, that in a day or two Forbes would draw for a balance against the same, and that the draft for $6,243.27 inclosed in the letter, was to make up a balance not before covered, of two former drafts of $20,000 and $30,000.

(Letter of Thompson, April 1,—Porter's Dep., Ex. A. fol. 55. Draft of Forbes, $6,243.27. Do. Ex. B., fol. 55.)

This letter with draft for $6,243.27, and bill of lading was received in due course of mail by Porter at New York. (Porter's dep. fols. 41, 42–44).

The draft for $6.243.27, was endorsed by Forbes "pay to yourselves," and addressed to W. J. Porter & Co., New York. (Porter's dep., fol. 55).

April 3, 1869. Thompson, by letter, advised Porter of a further draft of Forbes, against the 139 bales, for $4.000. This letter also advised of the enclosure of 2d of exchange for $6,243.27. (Letters, Porter's dep., Ex. C., 1 fol. 56).

This letter was received in due course of mail about April 7th. (Porter's dep. fol. 42).

Porter testifies that he thinks Ex. B. draft for $6,243.27, came in the letter of April 1st with the first of exchange, but it is wholly immaterial whether it came in the letter of April 1st or April 3d. (Porter's dep. fol. 41, 46–54).

April 5th, 1869. The draft of $5,000 endorsed by Forbes, Thompson, and Pike Bro. & Co. (bankers in New Orleans), was presented to Porter at New York and paid. (Porter's dep. fol. 42, and Ex. C., fol. 56).

April 7th, 1869. The draft for $4,000, endorsed by Forbes, Thompson, and Pike Bro. & Co., was presented to Porter, at New York, and paid. (Porter's dep., fol. 42, and Ex. D. fol. 57).

April 8th, 1869. Thompson wrote Porter, enclosing invoice of 140 bales, and weigher's certificate, and also a bill of lading for one bale to make the bills of lading correspond with the invoice. (Porter's dep., fol. 43, Letter, fol. 57. Invoice, fol. 58, Weighers' Certif., fol. 59. Bill of lading, dated April 8th, fol. 62.)

This second bill of lading was to Forbes' order as shipper, and endorsed by him "Deliver to W. J. Porter & Co."

Pratt was proved to be master of the "*Colson*" on the dates of the two bills of lading, and his signature thereto was duly proved, as well as the endorsements of Forbes and his signature upon the drafts. (Roby's Dep., fol. 73; Janvier's Dep. (Thompson's Clerk), fols. 81, 83; Porter's Dep., fol. 45).

No question was made that Porter advanced his money on the bill of lading of April 1st, in good faith, &c., without notice of its being irregularly issued.

Previous to April 1st, 1869, Thompson had drawn upon Porter for $20,000 and $30,000, and Porter had paid the drafts and a balance of $6,243.27 remained unpro-

vided for, and was never otherwise paid or covered, except by the bill of lading for 139 bales and Forbes' draft for $6,243.27 against it. (Porter's Dep., fol. 44).

It is not material in this case how much Porter advanced on the bill of lading, the issue being whether, by virtue of the bill of lading, he was, in May, 1869, the owner or entitled to the possession of the cotton. But it is submitted that Forbes' draft for $6,243.27, and his endorsement of it "Pay to yourselves," and his delivering it to Thompson, and Thompson's delivery with the consignment to Porter, gave Porter a valid lien for this amount also upon the 139 bales. The delivery of this draft, so endorsed with the bill of lading is evidence, either that the prior drafts paid by Porter, and the balance of which was so provided for, were really on account of Forbes. (See Thompson's letter to Porter, Mch. 31, 1869. Porter's Dep., Ex. H, fol. 60.)

Porter testified to the payment of these former drafts, and that the $6,243.27 was not otherwise provided for. (Porter's Dep., fol. 44, 45, 54.)

On the 5th of April, 1869, Thompson, as the agent of Forbes, bought of H. W. Farley & Co., cotton merchants at New Orleans, through E. A. Bignon, a broker, 139 bales of cotton, one of which was rejected. The 138 sold by Farley were, at the time of the purchase, stored in the shippers' press on account of Farley, and marked 75 E E, 40 D D, 13 J J, 5 P and 5 L.

The two bales furnished by the broker were marked E B.

Farley & Co. gave the broker a delivery order on the press, dated April 5.

This is the usual mode of delivering cotton in New Orleans.

Farley could not testify to the quality.

The price was at 26¾ cts., $17,377.33, and the weight 64,962 lbs. (Farley's Dep., N. O. Com., fol. 66–65; Broker's return, dated April 7th. 1869; same, Ex. A. fol. 132; extract from Farley's weighing book; Same, Ex. D, fols. 135,136; order on the press, Ex. E E, fol. 138.)

April 6th, Thompson, by his broker, directs the cotton

to be compressed and sent to the *Colson*, marked O 63, F 26, L 36, S 16. (Davis' Dep., N. O. Com., fol. 99; order, Ex. K, do. fol. 153.)

Keaghay, the shipping clerk in the shippers' press, testified that the cotton was delivered from the press April 8th, marked O 63, F 26, L 35, S 16, and this witness identified ten receipts for the cotton, dated April 8th, returned to the press by the drayman, nine of them signed by the mate of the "*Colson*," Roby, and one signed by the second mate, Keenan.

The marks and number of bales conform to Porter's two bills of lading for 139 bales and one bale, except that the receipts show 35 marked L and 16, S, while the bills of lading called for 36 marked L and 15, S. (Keaghay's Dep., p. fol 68, 69; receipts, Ex. F, fol. 139, 142.)

The signatures to the receipts were duly proved by Roby, the mate, who also proved the fact of the delivery to the ship on the morning of the 8th of April, in the usual and only place for receiving freight on the pier by the "*Colson*," and that no cotton bearing these marks was delivered to the "*Colson*" previously. (Roby's Dep., N. O. Com., fol. 74, 75.)

The invoice sent in Thompson's letter of April 8th conformed precisely with the cotton delivered. (Invoice, fol. 58.)

This discrepancy in the marks between the bills of lading and the invoice is noticed in Thompson's letter of April 8th, which distinctly refers to the bills of lading as covering the same cotton described in the invoice, notwithstanding this difference. (Porter's Dep., Ex. E., fol. 58.)

The cotton was weighed by Bradfute, employed as weigher by Farley, April 6th, 1869, who verifies the statement of the weights in the book produced by Farley, showing the weight of the 140 bales to be 64,962 pounds conforming to his certificate received by Porter, and to the invoice sent in the letter of April 8th.

He also gives the old marks and the new shipping mark. (Bradfute's Dep., N. O. Com., fol. 95; Porter's Dep., Ex. G., fol. 57; Extract from Farley's Weighing

Book, N. O. Com., Ex. D, fol. 135; invoice Ex. F, fol. 58.)

(*b.*) *This evidence shows conclusively that the cotton delivered to the "Colson" on the 8th of April was delivered by the shipper Forbes and received by the ship as and for the cotton described in the bills of ladiuy held by Porter, and that the delivery was complete, putting the cotton out of the possession of the shipper and into the possession of the ship for transportation under the bills of lading.*

The undisputed facts are consistent with no other intent on the part either of Forbes, the shipper, or of Pratt, the master.

Forbes' antecedent purpose to ship this very cotton by the "*Colson*," is shown by the order of the 6th of April, to compress and send it to the "*Colson*," with the marks called for by the bill of lading given April 1st.

His purpose is distinctly avowed in the letter of his agent Thompson, of April 8th, transmitting the invoice and supplemental bill of lading for the one bale delivered to the ship, in excess of the first bill of lading. And this letter, in explaining a discrepancy of marks between the two bills of lading and the invoice or actual shipment leaves no doubt that the shipment was by him understood and intended as and for the cotton described in the bill of lading.

Where a bill of lading has been issued in anticipation of the goods, and goods conforming to the bill of lading are afterwards delivered by the shipper to the ship, the presumption would be from the probable intention of the parties, that the goods so received by the ship are received as and for the goods described in the bill of lading, and on an agreement of the ship to transport and deliver them according to its terms. Such presumption naturally arises, because both shipper and ship are under the strongest obligation and inducement to make good the bill of lading, and because the very giving of the bill of lading without delivery of the goods, presupposes such subsequent delivery and receipt of the goods with such purpose and intent.

But in this case we do not rest merely on this presump-

tion as to the probable and natural meaning and effect of the act of delivery and receipt, conformable to the bill of lading, for the act of the master in giving the shipper the additional bill of lading for the one bale delivered in excess of the former bill of lading, is express and positive evidence of the master's knowledge and assent that this delivery was to make good the former bill of lading.

The fact that the receipts given by the mate were not surrendered, does not affect the question.

Where receipts are given in advance of the issue of the bill of lading they are usually surrendered on issuing the bill of lading. The master may exact it for his own protection, but even in that case, it is merely a question of prudence and caution on the part of the master. If he gives a bill of lading without getting the receipts, he may find that the goods have been sold, and the receipts transferred, after their issue, and that he has given the bill of lading to a person not the owner. But if a bill of lading has been already issued, it is not in contemplation of either party that another will be issued, or that any question can arise as to who is the shipper. If, therefore, receipts are given in such a case, there is no occasion for their surrender.

These receipts are not relied on as showing the contract of affreightment, or as evidence *in themselves* that the ship received the goods as and for the goods described in the bill of lading, but only as evidence that the ship did in fact *receive* the cotton; that it was delivered to the ship in the usual way in which cargo is received for transportation, and to identify it with the cotton previously purchased by the shipper with the intention to ship it under this bill of lading. The *terms* on which the cotton was received by the ship, is shown satisfactorily by other evidence above detailed.

II. By this delivery of th. ales to the "*Colson*," as and for the cotton described in the bill of lading, the title passed to Porter, who had advanced upon the faith of the shipment.

(*a.*) *A delivery on the wharf to the proper officer of*

the ship, in the usual place and manner for delivering cargo, is a complete dilivery, puts the merchandise out of the possession of the consignor and in possession of the ship, and binds the ship. The goods need not be actually put on board.

Buckley *v.* Naumk. St. Cot. Co., 24 How., 386.
Halliday *v.* Hamilton, 11 Wallace, 560.
1 Parson's Mar. Law, p. 132, and note.
Packard *v.* Getman, 6 Cowen, 757.
2 Kent's Comm., p 604 (12th Ed). do. 9th Ed.

(*b.*) *A delivery of goods, substantially corresponding with the bill of lading, to the ship, as and for the goods described in the bill of lading, makes the bill valid from the time of such delivery, though signed and delivered to the shipper before such delivery.*

Rowley *v.* Bigelow, 12 Pick., 314.
Halliday *v.* Hamilton, 11 Wall., 565.

After such delivery, satisfying the terms of the bill of lading, it is obviously just that the ship should be bound by the bill of lading, provided no intervening rights have accrued before the bill of lading is thus made good.

This is a rule eminently just and right. The shipper has obtained money upon the faith of the bill of lading, believed to represent goods actually shipped. He is under the strongest obligation to ship the goods, and so satisfy the bill of lading, and when he has so shipped them, he has simply done that which he ought to have done before.

The law favors the healing of defects, and the curing of titles, according to the intent of the parties, and the requirements of good faith.

The good sense and justice of the decision of *Rowley* v. *Bigelow*, are too obvious to need illustration, and the recent approval of the doctrine in *Halliday v. Hamilton*, puts this question at rest.

The opposite doctrine would lead to the insecurity of these commercial instruments, and favor frauds, and constantly expose merchants, dealing on the faith of these documents, to loss, by reason of secret defects, which they could not detect, and which, it is no injustice to any

party, to treat as cured, according to the intent of the parties.

The cases cited to the contrary, are cases where the goods *never were delivered*, or where the rights of third parties accrued before a complete delivery, conformable to the bill of lading. In such cases, of course the master has exceeded his authority, and the ship is not bound, nor is the possession and control of the shipper terminated. Such was the case of *Rice* v. *Porter*, as appears by opinion of Sutherland, *J.* : cited in the Court below. In that case there was a failure to prove that the cotton was delivered to or received by any officer of the ship, or even that any goods, substantially conforming to the bill of lading, and designed as and for the goods described therein, were carried to the ship. It was only shown that the cotton was taken to the pier and left there, and it did not conform either in marks or number of bales with the bill of lading previously given.

The case of *Bryan* v. *Nix*, 4 *M. & W.*, is entirely consistent with this view of the law. The Court distinctly intimate that, as to the second boat-load of oats, if, before the right of a third party had intervened, the quantity and description of goods called for by the bill of lading or boat's receipt or even a less quantity, had been delivered to and received by the master, as and for the the oats described in the receipt, the title would have passed, the bill of lading being treated as an executory contract, which the parties thus would have fulfilled. (*Per Parke, Baron : p.* 793.)

The difference between the weight given in the bill of lading, 68,012 pounds, and the weight of the cotton actually delivered, 64,962 pounds, cannot affect the question. Necessarily the weight in the bill of lading was fictitious, the cotton not being then purchased. Weight is not strictly descriptive, especially of an article like cotton, whose weight varies from time to time with the degree of moisture to which it is exposed. A bill of lading is only *prima facie* evidence at best of weights, and if this cotton had come forward under this bill of lading to Porter, no question could be made of its identity on account of differenee of weight.

Besides, trifling or even considerable variance between the articles described in the bill of lading and those shipped does not affect the question, provided the shipper delivers and the ship receives the goods as and for those described in the bill of lading. (*Per Parke, Baron, in Bryan* v. *Nix*, 4 *M. and W., p.* 793.)

(c) *The statute of Louisiana prohibiting the issue of a bill of lading without the receipt of the goods, does not prevent the application of this beneficial principle of law in this case.*

Without the statute, the bill of lading is void, and the statute makes it no more than void. It cannot operate to prevent the adoption and reissue of the bill of lading upon due delivery of the goods, according to the then lawful and proper intent of the parties.

The statute was designed to prevent and punish frauds, not to prevent parties who have been guilty of a fraud from undoing their wrong, and making what was void thenceforth valid by a new act lawful and just, and necessary for the protection of innocent parties.

(d) *Another complete answer to this suggestion of the statute is: that Porter's title rests not necessarily on the bill of lading, but on the shipment made April* 8, *in conformity to the consignment to him by Forbes through Thompson, and his advances in good faith on that consignment. A bill of lading is not necessary to a valid sale or consignment, though it is usual evidence of such consignment.*

If Forbes had delivered the goods to the ship, and the ship had received them on a contract to carry and deliver them conformably to the terms of the bill of lading, Porter's title would have been complete, and Forbes' possession and control over the goods would have been at an end, though they were shipped without a bill of lading.

So, even if the statute operates to prevent a rehabilitation of this void instrument by a subsequent delivery of the goods as a bill of lading, the bill is still a fact in the case, and has the same bearing and effect in proving the intent of the parties; and we have the case of a ship-

ment conformable to a consignment advised and drawn against, and an actual delivery to the carrier as advised for the benefit of the consignee. This is a complete title.

Grosvenor *v.* Phillips, 2 Hill, 147, [redacted] 152
Holbrook *v.* Wight, 24 Wend., 169.
Bryans *v.* Nix, 4 M. & W., 791.
Cayuga Co. Bk. *v.* Daniels, 47 N. Y., 637.
Bailey *v.* [redacted] R. R. Co., 49 N. Y., 70.

III.—*The same* 140 *bales, delivered to the "Colson," on the morning of April* 8, *were, by order of Forbes, removed to the "Ladona" in the afternoon or evening of the same day, and shipped to New York with twenty-five bales from some other source. Forbes procured a bill of lading for the* 165 *bales by the "Ladona," marked* ⟨T⟩ *by his order, and indorsed it, and consigned the whole to Schaeffer & Co., under whom the libellants claimed title.*

And these 165 *bales were with* 35 *other bales shipped on the "Idaho."*

(*a.*) The testimony of Roby, the mate, is positive that these 140 bales were taken away by Forbes' order on the afternoon of April 8; that there was no other lot of cotton then lying by the "*Colson.*" (Roby's Test., N. O. Com., fols. 74, 75.)

The testimony of Ryan is positive that he took it to the "*Ladona.*" Forbes paid him 25 cents a bale; told him that it was to be re-marked at the "*Ladona;*" that he took receipts, which he gave to Forbes. (Ryan's Dep., N. O. Com., fols. 103–107.)

Smith, the purser, testified that only 165 bales of cotton were delivered that voyage; that it was all delivered at one time; that it was re-marked by the shipper ⟨T⟩ at the pier; that the receipts would come back to the agents of the ship, Fosdick & Co., upon issuing the bill of lading; that this cotton was delivered two or three days before she sailed; that she sailed on the 10th April. (Smith's Test., fols. 33, 34, 272.)

Rareshide (of Fosdick & Co.) proves a search for the receipts and a failure to find them. (Rareshide's Dep., N. O. Com., fol. 118.)

The bill of lading, dated the 9th April, conforms in time to the other testimony. (Libellant's Ex., 4, fol. 316).

There is no material conflict in the testimony of these witnesses, nor is any evidence produced to contradict them, or to show either that the "*Colson*" cotton went elsewhere, or that the "*Ladona*" cotton, other than 25 bales, came from any other place.

It may fairly be presumed that Mr. Schaeffer could, with the same diligence that Porter has used, have traced the title of the cotton shipped to him, and thus have controlled Ryan's testimony, if untrue.

Ryan's statement, that some of the bales were within ten feet of the "*Colson*" is not a material variance from the testimony of other witnesses in the case.

It is quite supposible that he had forgotten that the "*Colson*" lay outside of another vessel.

(*b*) *The return of marks and weights from Liverpool confirms the direct testimony to the identity of the cotion delivered to the "Colson," with a part of that shipped on the "Idaho."*

It was admitted that the 165 bales brought to New York by the "*Ladona*" were stored in the New York warehouse, and afterwards, with 35 other bales, shipped on the "*Idaho*," 120 marked S A L and 80, V O X. (Admission, fol. 35).

Corcoran testified that he took off all the marks from the 165 bales in the New York warehouse. He could not remember whether he took off the marks from the 35 bales in West street or not. (Corcoran's testimony, fol. 39.)

The cotton was taken to Liverpool; 165 bales were delivered to Baring Bros., on Porter's order, and 35 to Finlay & Co., the agents of Hentz & Co.

The 165 delivered to Barings were examined in Baring's warehouse by Patrick McAdam and George Dearden, employed by Barings for that purpose, on or about the 2d of July. They made a careful and detailed return of all the marks found on the bales. (McAdam's Dep., Liv Com., fols. 223–228; Dearden's Dep., Liv. Com., fols. 229–233; their return, Ex. A., fols. 260–263.)

That these were the bales landed from the "*Idaho*" and delivered to the Barings, and that they remained in the same condition as when received at the time of the examination, appears by the fact that they were in Barings' warehouse, 99 marked S A L, and 66, V O X, and by the testimony of the persons having the custody of them. (Gavin's Dep., Liv. Com., fols. 245–247; McAdam's Dep., Liv. Com., fols. 224–228.)

The examination was very thorough. Where the covering was double they looked for marks under the outer covering. (McAdam's Dep., Liv. Com., fol. 224).

The libellants produced a witness, Jolly, who swears to having examined the 165 bales at Finlay's request, partly on the quay and partly in the warehouse of the Sanden dock, from the 19th to 21st May, 1869 (Jolly's Dep., Liv. Com., fol. 278).

Jolly also testifies that he examined the other 35 bales at the same time, on the Sanden Dock, in the possession of the master-porter of the "*Idaho.*" (Jolly's Dep., Ex. I, Do., fol. 279; Jolly's return of 165 bales, Do., Ex. J fol. 289; Jolly's return of 35 bales, Do., Ex. J^2., fol. 291).

The 35 bales, after delivery to Smith, Edwards & Co., and in their warehouse, were examined and weighed by one Geo. Lyon, who makes a return of marks and weights. (Lyon's dep. and Return, Liv. dep., fols. 257–259, 292.)

Saml. Smith, of the firm of Finlay & Co., testifies that he employed Jolly and George Carter to make the examination; that he did not see the 165 bales. (Smith's dep., Liv. Com., fols. 273–274).

No evidence is produced to confirm Jolly's statement that the 265 bales examined by him were the same landed from the "*Idaho*," and the bales that he examined and testified to were, at the time, partly on the quay and partly on the Sanden dock. It had been, he says, in possession of the master-porter of the *Idaho*. (Jolly's Dep., Liv. Com., fol. 278.)

Jolly was a broker's clerk, in the employ of Smith, Edwards & Co. He says that he first saw the 165 bales May 19th, and the examination was from the 19th to the 21st of May. (Jolly's Dep., Liv. Com., fols. 277, 278.)

He does not swear that he saw it landed from the "*Idaho*," nor is it to be presumed that he remained on the spot, and can, of his own personal knowledge, testify to the identity of the cotton.

It is clear, from the testimony of Martin Gavin, the overlooker of Barings, that the 165 bales were delivered directly from the quay to the Barings, and were taken to the Barings' warehouse, and, therefore, no part of them went into the warehouse of the Sanden Dock.

Gavin testifies that he examined the 165 bales about the 20th and 21st of May on the quay, to see that the marks corresponded with the delivery order (Liv. Com., fol. 246). His answer to the third interrogatory shows that he means that he saw it first, and made the examination on the 20th or 21st, not that the examination took two days. He testifies (fol. 247) that "he took delivery as before stated," that is, at the time he examined it, to see if it corresponded with the delivery order; that he saw most part of it put on the carts, and that it was taken from the quay to the warehouse (fols. 246–249)

McAdam testified that he was Barings' head warehouseman and that he received the 165 bales into their warehouse on the 21st day of May. (McAdam's Dep., Liv. Com., fol. 224.)

It is, upon this evidence, fully proved that the part of the 165 bales examined by Jolly in the warehouse of the Sanden Dock were not part of the cotton landed from the "*Idaho*" that voyage, but some other cotton marked S A L and V O X that he found there and mistook for this cotton.

On the other hand, the proof is conclusive that McAdam and Dearden did examine the very same 165 bales delivered to the Barings.

A comparison of the returns of McAdam and Dearden and Jolly and Lyon will show that Jolly's return as to the one hundred sixty-five bales must be rejected; that he either examined, in whole or in part, the wrong cotton, or that he has misstated the marks.

The return of Jolly of the thirty-five bales (Liv. Com., fol. 291), and that of Lyon (fol. 292), differ only in two particulars:

Of the twenty-one marked S A L, Jolly found marks on eleven, and Lyon found the same, except that one mark reported by Jolly as O E C is reported by Lyon as E.

Of the fourteen marked V O X, Jolly finds five with marks; Lyon finds the same marks on five, and one bale with L, not reported by Jolly.

These differences are not such as may not be accounted for by differences in the care and accuracy of observation.

Assuming that Jolly overlooked the mark L on one bale seen by Lyon, the result of their return is as follows:

Delivered to Finlay		35
Of these, S A L		21
No other mark	10	
Gin mark on the cotton sold by Farley and delivered to the "Colson" D. D	1	
Marks in Porter's bill of lading O, 3; L, 1	4	
Other marks—S K, 1; [L] 1; [O E C] 1; [A] [O] 1; S. & A. to J. J. P. & Sons, Wash., 1; [O] [O E C] [R], 1;	6	
	—	21
V O X		14
No other marks	8	
"*Colson*" marks, O 4, & L, 1	5	
Other marks, G N	1	
	—	14

Total of the 35 bales:

No other marks	18
Original gin marks, D D	1
"*Colson*" marks, O, 7, L, 2	9
Other marks	7
	35

This is just such a result as was to be expected upon the supposition that the testimony of Ryan is true, and that Corcoran took off all the marks of the one hundred sixty-five bales, as nearly as he was able, in the time he had to do it in.

We find a large proportion (eighteen) with no other mark; one (D D) of the marks on the cotton when it left

the press in New Orleans, and nine of the "*Colson*" marks, and seven new marks, perhaps, on the thirty-five bales from West street.

It is certain that the one hundred and sixty-five bales delivered to Barings and the thirty-five delivered to Finlay were delivered promiscuously (Thornburn's Dep., Liv. Com., fol. 242; Evison's Dep., Liv. Com., fol. 254).

We should, therefore, expect to find among the one hundred and sixty-five bales delivered to Barings a somewhat similar proportion of bales bearing no other marks, and of bales bearing the original and shipping marks of Porter's cotton as are found among the thirty-five bales.

Such proportion we do find according to the return of McAdam and Dearden.

By their return:

Of the 165 delivered to Barings, 99 there were	
Marked S A L	99
No other mark	75
Gin marks as when sold by Farley, E E, 1; D D O, 1	2
"*Colson*" shipping marks—O, 6, besides, 1 bale D D O as above, F 1	7
"*Ladona*" shipping mark ⟨T⟩, 1	1
Other marks—T E, 1; J D F, 1; Wash, 2; E, 1; F F / F, 1; W & C, 1; (O), 5; F S T J R, 1; S S W, 1	14
	99

By Jolly's return:

Of these marked S A L	99
No other marks	33
Porter's marks at time of sale by Farley, "*Colson*" and "*Ladona*" shipping marks, none	0
Other marks	66
	— 99

Of the 66 marked V O X delivered to Barings, McAdam and Dearden report:

Marked V O X	66
No other mark	44
Marks at time of sale by Farley—D D, 2; E E, 3; I I, 1	6
Colson shipping marks—O, 7; L, 4; F, 1; S, 1	13
Other marks—⟨L⟩ 1; V, 1; G, 1	3
	66

Of the same Jolly reports:

Marked V O X	66
No other marks	42
Marks at time of sale by Farley, *none*	—
Colson shipping marks, F, 4	4
Other marks	20
Of which only 1 marked V is found by McAdam.	
	— 66

The result of the whole 165:

By McAdam and Dearden—

No other marks	119
Farley's marks	8
"*Colson*" marks	20
"*Ladona*" marks	1
Other marks	17
	165

By Jolly:

No other marks	75
"*Colson*" marks—F, 4	4
(Of which McAdam only returns F, 1, hence it is probable that the other 3 were bales not examined by McAdam.)	
Other marks	86
(Of which 10 only are reported by McAdam, viz.: J D E, 1; ⓪, 5; M S S, 1; Wash, 2; V, 1.)	

It will be noted that McAdam and Dearden report one bale marked D D O. Bradfute, the weigher, swore to the truth of Farley's weighing book, which shows that the forty bales D D were re-marked O when shipped to the "*Colson*" (N. O. Com., fol. 135; Bradfute, fol. 95).

This difference between McAdam and Dearden on one side and Jolly on the other cannot be accounted for on any theory of obscurity or uncertainty of marks.

The most probable solution of the difference is that Jolly examined the wrong cotton.

McAdam and Dearden's report is consistent with the facts proved in the case. It is consistent with, and Jolly's report is wholly inconsistent with, Corcoran's testimony.

Corcoran says he removed all the marks. This, of course, is to be understood, with this qualification, that he intended to remove all the marks, but, having 200 bales to work on and repair and prepare for shipment in one day, we should expect to find some marks

escape him. He was doubtful about the 35 in West street.

Add to this evidence from the face of the returns the fact that no evidence is produced to corroborate Jolly; that no witness swears to the identity of the bales examined by him with those delivered to the Barings; that Carter, his fellow-examiner, is not called as a witness, although McAdam and Dearden had first given their testimony before the Commissioner; that if the marks returned by him were true, Mr. Schaeffer could easily have proved it by his invoices, or by tracing the cotton, and that for several days before shipment all this cotton was in Mr. Schaeffer's possession in New York, and that he must be presumed to have evidence of its marks, and there can be no hesitation in rejecting Jolly's testimony as mistaken.

Rejecting Jolly's testimony, the other testimony of marks taken at Liverpool strongly confirms Ryan's statement that he took the 140 bales to the "*Ladona*," for the marks that remain are sufficient to establish its identity.

(*c.*) *The evidence as to weights also tends to prove the identity of the cotton.*

Bradfute weighed the 140 bales delivered to the "*Colson.*"

His return shows 140 bales . . . . . 64,962 lbs.
Average per bale . . . . . 464 lbs.
They run from 334 lbs. to 585. (N. O. Com., fol. 135, 95.)

This is the weight by which Farley was paid (N. O. Com., fol. 132). It may be assumed, therefore, as the net weight, unless from other evidence in the case it cannot be such—but it is not sworn to be net weight, nor is allowance for tare stated.

Lyon weighed the 35 bales delivered to Finlay in Liverpool. He reports, (Liv. Com., fol 293):

35 bales, 135 cwt. $\frac{3}{4}$, 21 lbs., or 35 bales . . 15, 225 lbs.
Average per bale . . . . . 435 lbs.
(Lyon's Dep., fol. 259.)

This is the only sworn evidence of weights. The other statements of weight in bills of lading, bills of sale, &c.,

are not sworn to, and cannot be made the basis of any calculation.

Any argument, therefore, based on the weight stated in the bills of lading by the "*Colson*" or the "*Ladona*," must necessarily fail, because neither of these weights is proved to be correct. Nor was the weight stated in the bill of sale to Hentz proved to be correct.

The evidence from Liverpool of the weight of specific bales, whose marks remain, is consistent with the evidence from New Orleans of the weights of bales similarly marked.

Lyons reports, (Liv. Com., fol., 292), L, 457, 521.

Bradfute's Book gives (N. O. Com., fol. 135), L, 526, 466, 531, 425, 343.

Lyon gives, D D, 392.

Bradfute, D D, 394, 403, 415, 416 and 35 other weights.

Lyon gives, O, 412, 416, 423, 461, 463, 486.

Bradfute, O, 63 different weights, from 336 to 540.

Comparison of weights of particular bales is not very reliable.

Considerable differences might be found between weights of the same taken at New Orleans in April, and weights taken in Liverpool the last of May, the weight being affected by the change of temperature and climate. (Schaeffer, fol. 294–295.)

The above comparison shows that all the bales reported by Lyon with Porter's marks may have been the same weighed by Bradfute, and so far as this return of specific weights goes, it confirms the claimant's testimony.

(*d.*) *The evidence as to the covering of the bales, &c., and whether they were compressed or not, is not inconsistent with the evidince of the identity of the cotton.*

Keaghay testifies (N. O. Com., fol. 71) that all the cotton was compressed (meaning the 140 bales); he don't know what kind of bagging the cotton was put in, and don't recollect whether it was bound in iron ties or ropes.

McGrath testifies (do., fol. 92) "All the cotton was compressed; I can't recollect whether the cotton was put

in gunny cloth or bagging or whether with iron ties or ropes."

Bignon's order (do., fol. 153) was to compress the 140 bales.

Bradfute testifies (do., fol. 97) "The cotton was compressed, I presume; I can't recollect kind of bagging in which cotton was put up, or whether with iron ties or ropes."

Davis testifies (do., fol. 101): "I can't state what kind of bagging the cotton was put up in; I know it was all compressed; I do not know whether it was bound in iron ties or ropes."

Ryan testifies (do., fol. 107) "The cotton was all compressed in India bagging as well as I remember; it may have been some other bagging."

McConnon testifies (do. fol. 112): "All the bales were compressed; the usual bagging was on this cotton; I don't know whether hemp or gunny cloth; I don't know how they were fastened; I believe with iron ties."

John Smith testifies (do., fol. 116): "Bales were all compressed; I can't say what kind of bagging were on these bales; I believe the bales were fastened with iron ties."

Bignon testifies (do., fol. 124): "The cotton was all compressed: don't know the description of bagging or whether it was put up with iron ties or ropes."

Williams, receiving clerk of "*Idaho*," *testifies* (fol. 38): That he gave receipts Ex. **R**, pp 338–346, for the 200 bales delivered to the "*Idaho;*" that "uncomp." on three of those receipts means uncompressed: that he noted it on the receipts; these three receipts are for 22 bales.

Corcoran testifies (fol. 39): That he mended the bales with gray bagging.

McAdam testifies (Liv. Com., fol. 224): "Cut the outside canvas off wherever it was double," &c.; "There was a deal of extra canvas," &c. (do., fol. 225); "The covering had been repaired, where cut away by pieces of extra canvas" (do., fol. 226); "Only part was compressed; I don't know how many" (do., fol. 226). In answer to question p. 8, "How covered, with gunny cloth or hemp bagging?" he testifies: "Principally with gunny cloth; don't remember

any hemp bagging; some bales had rope bands, and some iron bands; I don't remember any with both."

Dearden testifies (Liv. Com., fol. 231): Some of the bales were compressed and some were not; unable to say how many of each. Don't remember how they were covered—how many had gunny cloth and how many hemp bagging; some bales had rope bands and some iron, and some were mixed; there was not a full complement of bands on all the bales.

Gavin testifies (Liv. Com., fol. 248): "It seemed to me to be compressed cotton; I don't know how many; I think all were compressed; to the best of my recollection, some were covered with gunny cloth and some with hemp bagging; some of the bands were ropes and some were iron; they had their full complement of bands; I don't know how many were rope and how many were iron."

Evison testifies (do., fol. 254): I did not notice whether they were compressed or no; I did not notice the character of the bagging or the ties."

Jolly testifies (do., fol. 278): I noticed that some of the bales were covered with what we call black canvas (that is canvas) of a dark color, made in America; the others were covered with Dundee canvas."

Blackwell testifies (fol. 296) that he saw about ten bales from the "*Ladona*;" they were covered with Kentucky bagging.

There is no conflict in this testimony; the English witnesses use "canvas" as synonymous with bagging or covering.

We don't know what Jolly may have seen on the bales he examined by mistake in the warehouse of the Sanden dock.

The 140 bales were all compressed and probably the 165 bales by the "*Ladona*."

Among the 35 in West street were 22 bales uncompressed, some of which went to to the Barings.

(*e.*) *There is very little evidence as to quality, and nothing conflicting with the other evidence showing the identity of the cotton.*

Blackwell testified that he had seen samples of the "*Ladona* cotton," and it was all of the grade of low middling.

On *Cross-examination*, it appeared that he did not know that the samples were from this cotton.

His evidence is, therefore, of no value. (Blackwell's Test., fol. 296.)

Porter's invoice (Porter's Dep., fol. 58) gives 63 bales low middling, 26 strictly good ordinary, 35 good ordinary and 16 ordinary (fol. 58.)

Farley testifies that he couldn't speak as to quality; that in the months of March and April, ordinary to low middling cotton was worth 25 to 27 cents per pound; from low middling to the higher grades, it was worth from 27 to about 28 to 28½ cents a pound (fol. 137).

The classification of cotton runs from ordinary to good middling. (N. O. Com., fol. 137.)

There was no evidence as to the quality of the 25 bales mixed with the 140, nor of the 35 mixed with the 165.

IV.—*Porter's title has not been divested by the shipment to Schaeffer, nor by the alleged sale to Mann, or to Hentz.*

The title of the true owner cannot be affected by the unauthorized act of any other party in taking possession of the goods, consigning them by bill of lading, and a *bona fide* sale from such consignee would not affect the title.

Saltus *v.* Everett, 20 Wend., 267.
Brower *v.* Peabody, 13 N. Y., 126.
Mech. Bank *v.* R. R., 13 N. Y., 628.
Covell *v.* Hill, 6 N. Y., 379.
Wooster *v.* Sherwood, 25 N. Y., 287.
Boyce *v.* Brockway, 31 N. Y., 493.

In a recent case this Court clearly recognized and enforced the principle on which these cases rest, which is: "that the owner of personal property cannot be divested

of his ownership without his own consent, except by process of law.

Dows *v.* Nat. Ex. Bank, 1 Otto, 637.

Forbes having delivered the goods to the ship, his possession and control were thereby at an end, and he had no more right to take them than a stranger.

As consignor, having drawn against them and negotiated the draft, he had parted with the right of possession as completely as if he had sold and delivered them, and they passed into possession of the ship, which thenceforward held them for the consignee.

Same cases.
Also Bailey *v.* H. R. R. Co., 49 N. Y., 70

His retaking the goods was no better than an act of theft, and the title under him cannot be regarded otherwise than as a title to stolen goods under the thief.

The Master, having once received the goods for carriage under the bill of lading, has no more right than any other party to take them away and ship them to another consignee.

Saltus *v.* Everett, 20 Wend., 267.

It is, therefore, wholly immaterial whether Forbes took the cotton away with or without the consent of the Master. He had no authority to give the consent. However, there is no evidence of the Master's consent. The only evidence is that Roby, the mate, saw Forbes take the cotton away, and there is no evidence that he objected. It is wholly immaterial whether his inaction was through ignorance or otherwise.

As regards this point, it is wholly immaterial whether Mann or Hentz can be regarded as a *bona fide* purchaser. The question of their good faith will be hereinafter discussed.

A *bona fide* purchaser, under one who has obtained possession unlawfully and without consent of the owner has no title.

Same cases.

Second Point.—By Schaeffer's unauthorized intermingling of Porter's 140 bales with the 25 other bales, brought by the "*Ladona*," the whole 165 bales became the property of Porter.

I.—*The rule of law in regard to the intermingling of goods of similar quality, is well settled.*

If the intermingling is unintentional, accidental or by an innocent mistake, the title to the goods is not changed, and each owns his proportionate part.

But if the intermingling is done by one party purposely, and with intent to mislead the other and prevent him from recovering his goods, the law declares it to be a fraud upon the owner, and the goods become wholly the property of the injured party.

The reason and justice of the rule are too obvious, and the authority of the rule is too well established to need any illustration or comment.

2 Black's Com., 404, 405.
2 Kent's Com., p. 453–4 (9th ed.) p. 448 (11th ed.) marginal p. 365.
Ryder *v.* Hathaway, 21 Pick., 298.
Hart *v.* Ten Eyck, 2 Johns. Ch., 62, 108.
Frost *v.* Willard, 9 Barb., 447.
Dunning *v.* Stearns, 9 Barb., 634.
Colwell *v* Reeves, 2 Campb., 575, and note.
Loomis *v.* Green, 7 Greenl., 393.
Hesseltine *v.* Stockwell, 30 Me., 370.
Stephenson *v.* Little, 10 Mich., 441.
Weil *v.* Silverstone, 6 Bush., (Ky.,) 698.
Smith *v.* Sanborn, 6 Gray, 134.
Spence v Ins. Co. L. A. 3 C.P. 437, 438 Wide

The rule, and the reason of the rule, apply as well to a case when the intermingling is effected purposely by a party suspecting that the goods may belong to another, with intent to prevent that other from reclaiming them, as to a case where he, in fact, knows that they are not his own.

This was the precise point in

Ryder *vs.* Hathaway, *ut supra.*

All the authorities show that in case of intentional intermingling, the burden is thrown on the party mingling

the goods to distinguish his own from the mass. If he cannot do so, he loses them.

Same Cases.

Perhaps where there is absolute identity of quality and value, as, for instance, in guineas of the same coinage, this strict rule will not be applied, for in such case the innocent party cannot be injured if he takes his proportion. But the burden of proving this absolute identity is on the wrong-doer, and such proof was not attempted in this case.

2 Kent's Com., *ut supra.*

And even where the goods are of the same kind and value, the party whose goods are thus *fraudulenty* mingled with thote of another, has an undoubted right to take possession of the whole mass, leaving the wrong doer, if entitled thereto, to pick out and reclaim his own, if he can, or to demand a proportional part of the proceeds.

Stephenson *v.* Little, *et supra.*

So that in this case the real question being whether Porter was entitled to the possession of the 165 bales, it is immaterial whether or not the cotton was absolutely of the same quality or value.

II. Facts as to the mixing of the cotton.

(*a.*) The "*Ladona*" arrived in New York, and the cotton was delivered to Schaeffer on the 29th or 30th of April. The 165 bales marked /T/ were taken directly by the lighter "*Charles*" to the New York Warehouse, at Red Hook, where they were stored in the name of A. C. Schaeffer & Co. (T. M. Smith's test., fol. 33, 34, 272; Shortland's test., fol. 34; Exhs. N. & O., fol. 340; Campbell's test., fol. 35.)

There is no doubt upon the evidence that Schaeffer, fearing or suspecting that the cotton shipped to him by the "*Ladona*," or some of it, might prove to belong to somebody else, purposely, and to prevent such other person from reclaiming it, destroyed the marks of the 165

bales, by which alone the identity of the bales could be traced, and purposely mixed the 165 bales with 35 bales from another quarter, and caused it to be hastily shipped under new marks, in new and different proportions, 120 marked SAL and 80, VOX, in the name of Thomas W. Mann, and made a pretended sale of the 200 bales, for the purpose of still further confusing the title and misleading all inquiry as to the identity and disposition of the cotton.

Schaeffer testifies: "At the time this cotton came, I knew of trouble about cotton on the "*Colson*"; I was a sufferer, and held some of the bills by the "*Colson*"; I knew the "*Colson*" was short 800 or 1000 bales; I didn't know Porter then. Before I received this cotton the newspapers contained articles about this fraud from New Orleans. I had heard that Porter was in the same condition that we were as to the cotton alleged to haae been shipped on the '*Colson*'" (fol. 294). "I had the shipping marks changed to avoid legal trouble, as I suspected somebody might claim it" (fol. 295).

Mann, in whose name the cotton was shipped, and the libellants, to whom Mann transferred the bill of lading, allowed themselves to be used by Schaeffer in this scheme.

On the 1st day of May Schaeffer engaged freight by the "*Idaho*" for 200 bales of cotton for Liverpool, and this shows clearly his purpose to mix these 165 bales with the 35 in West Street. (Gale's test. and Exs. S. and T., fol. 40, 349, 350; Underhill's test. and Ex. Q., fol. 40, 341).

On the same day, May 1st (Saturday), Schaefter sent to Peter Corcoran, the mender of cotton bales, commonly employed by him, to call and see him; but Corcoran was not found. (Schaeffer's test, fol. 295.)

On Sunday night Corcoran called at Schaeffer's house and saw him, and there Schaeffer's instructions were given to Corcoran, as to the removal of the marks and the marking of the 165 bales SAL and VOX, so as to make with those in West street- of which 120 were already marked SAL and 80 VOX (fols. 293, 295).

Two things will be noticed, however—*First*, that Schaeffer sought a *personal interview*, while if his in-

tention had then been merely to have the cotton prepared for shipment in the usual manner, a message to Corcoran would have been sufficient, and all that the case required. *Secondly*, that Schaeffer's message was so urgent that Corcoran, on receiving notice of it, thought it necessary to go and see Schaeffer on a Sunday.

Corcoran says that Schaeffer (or Barker as he thought it was) told him to take off *all the marks*, and he was especially told to take off (Corcoran's test., fol. 39.)

Schaeffer says he told him to take off the shipping marks, which would seem to include O. F. S. and L, as well as (Schaeffer's test., fol. 293.)

On this point, if the difference is deemed important, Corcoran's account is the more credible and is sustained by the other facts in the case.

Corcoran had to remove the marks from the 165 bales, at least, and to put them and 35 other bales in West street, N. Y., in order, and all on the very day that the cotton was to be sent to the ship. Is it probable that under these circumstances he would have taken the trouble, without instructions, to remove two other sets of marks from at least 140 bales which are proved to have had such other marks?

The returns from Liverpool show 137 bales with no other mark than SAL and VOX, and of the original gin marks on 140 only D. D., 4, I. I., 1, E. E., 4. Of the "*Colson*" marks (O-20 L., 6, F., 2, S., 1.) Of the "*Ladona*" shipping mark 1, sundry other marks 24. (*Ante*, pp. 16, 18.)

The whole number of bales without marks and of bales having the gin and other shipping marks of Porter's cotton, is 176, or eleven more than the 165 which Corcoran was instructed to remove marks from. (*Ante*, pp. 16, 18.) It is probable therefore that some one of the marks on Porter's cotton, most probably O, was also a mark on some of the 35 bales at West street; but whether this is so or not (and Mr. Schaeffer could have proved the fact), Corcoran did his duty faithfully and must have

understood Schaeffer's instruction to be to remove all the marks, for this he evidently tried to do, and did effectually as to all but an inconsiderable number of bales as he was instructed; he was most thorough as to the but he was also thorough as to the others, having regard to his time and opportunities.

It is very improbable that Corcoran misunderstood Schaeffer, for the urgency of the occasion and the large value involved in the danger to be guarded against, would naturally make Schaeffer very explicit in giving his instructions, and Corcoran very careful in receiving them.

If any doubt remains in view of what Corcoran actually did, then Corcoran is the better and more truthful witness.

Corcoran has no interest in the case. He is friendly to Mr. Schaeffer, being his mender, employed by his house. He is apparently truthful, and on this point clear in his recollection, and the fact is one he has good reason to recollect for he acted on it.

On the other hand, Schaeffer has the interest and bias of a party to the controversy. His interest naturally affects his recollection, when his recollection is at all indistinct or at fault.

On another important fact, the alleged guarantee of Duncan, Sherman & Co., he is contradicted by Mr. Kitching. (See Dep. of Kitching, fol. 301–305. Schaeffer's test., fol. 293–306. Grain's test., fol. 297–299.)

On another point his testimony conflicts with Hentz's. He says Mann was *an old cotton merchant* (fol. 295). Mr. Hentz, a friend of Schaeffer and in the business, knew him only as Schaeffer's clerk (fol. 31). It is very improbable that Mann could be an old cotton merchant without Hentz knowing it. At any rate Schaeffer's unsupported testimony is insufficient against this improbability, Mann not being called. Schaeffer has shown upon the stand, in one signal instance, a want of candor and truthfulness.

Having testified that he feared, in consequence of the "*Colson*" frauds, then known to him, that somebody would claim this cotton, and that he had the marks re-

moved to prevent legal difficulty, he testified that *he knew at the time that the cotton was his* (p. 295).

It is clear that if he really knew that the cotton was his, it was of the utmost importance to him to preserve all evidence of his title, and among the rest and especially the evidence of its having come by the "*Ladona*," the very evidence that he confessed to having purposely suppressed.

It is evident, too, that he did *not know that the cotton was his*, and that knowing what he did of the nature and extent of the "*Colson*" fraud, he feared that somebody else would make out a title to the cotton which might prove to be better than his.

What he did know was that the cotton came to him from Thompson, drawn upon by Forbes, and that Forbes' drafts had passed through Thompson's hands; that the shipment was so far irregular, that he had received no invoice, and was exactly like in its circumstances to the former consignment of 121 bales to him by the *Colson* on which he had been made a victim by Forbes or Thompson, his former bill of lading being dated March 25, and he knew that this cotton left New Orleans about the time of these fraudulent operations. He knew that Porter & Co., New York, merchants, were sufferers by the fraud. (Blackwell's test., fol. 309. Shaeffer's test., fol. 294 Libt's Exhs. 47–8, fol. 315–318.)

It is wholly impossible and inconsistent with what he then knew, and especially with his knowledge of Forbes and Thompson, under whom he held that he *can have known* that his title was good—or even that he could have felt any confident assurance of it.

If he knew anything else about his title, he has not disclosed it upon this trial, when he has certainly every inducement to show its validity.

Now, the removal of the might be sufficient to confuse any one searching for this cotton; but the cotton could still be traced into and out of the warehouse and identified as the "*Ladona*" cotton by the books of the warehouse and lighter-man. Mr. Schaeffer knew very well that the other marks, as well as the "*Ladona*"

shipping mark, might be the means of identifying the cotton if it was part of the 800 or 1,000 bales for which he knew the "*Colson*" had given bills of lading. A man who did not hesitate to destroy evidence of his neighbor's title to make good his own possession, while suspecting that it was unlawful and in fraud of his neighbor, would not stop at half-way measures, and his statements in his own exculpation must be received with great caution, and should not only not be contradicted by credible evidence, but should be supported by some corroboration. All presumptions are to be taken against the despoiler of evidence.

Upon a comparison of these two witnesses, then, the inherent probability of their respective statements and the evidence of what was done under the instructions, it is confidently claimed that Corcoran's statement is true, and that Schaeffer instructed him to remove all the marks, and, it may be added, that the learned District Judge, having seen and heard them both, has decided in favor of the credibility of Corcoran, and upon a review of the whole testimony his judgment has been confirmed on the appeal.

(*b.*) On the 3d of May, Monday, the cotton was to leave the warehouse, and to be shipped on the "*Idaho*," but it was not thought safe to have it shipped in the name of Schaeffer, even though going out with new marks, mixed with other cotton and in lots of new numbers. If the owner traced the cotton to the "*Ladona*," by which it was known Schaeffer had cotton, a shipment in the name of Schaeffer would be at once suspected. So a hurried sale, without the usual formalities of sale in the cotton trade is made, or pretended to be made, by Schaeffer to Mann, his clerk, who, the same day, goes through the form of a sale to Hentz. Mann pays nothing for the cotton. There is no delivery to him. It was then under the knife of Corcoran, in the employ of Schaeffer.

When Mann sells it to Hentz he makes no secret that it is all a sham; he is requested to ask no questions (fol. 31, 32).

Hentz knew Mann only as Schaeffer's clerk. He thought it surprising that Mann, who was a person of no responsibility, should own this large amount of cotton, and in answer to his inquiries Mann tells him that he owns it; but desires him to ask no questions, and especially not to ask whether it belonged to Schaeffer or not.

Mann gives a bill of sale to Hentz, not stating the quality of the cotton, giving its marks S A L, 120 bales, and their weight 53,576 lbs. and V O X 80, and their weight 36,160 lbs. (fol. 314).

These marks and the number of each mark Schaeffer had resolved upon on Sunday night, when he instructed Corcoran, and they were an important part of the scheme for misleading all inquiry and confusing the title to the cotton. This bill of sale shows that Schaeffer or Mann knew the weight of the 165 bales, bale by bale, yet Schaeffer and Blackwell swear there was no invoice (fol. 307, 310). It must have been weighed in New York, because, until Corcoran marked the bales it could not be known which were S A L, and which V O X. The only alternative is that the weight stated in the bill of sale is fictitious.

It is too plain for argument upon Hentz's testimony alone and Mann's admitted connection with Schaeffer, that Mann understood that the sale to himself was part of a scheme of Schaeffer's for obscuring the title to the cotton and getting it off to Liverpool before any other claimant should find it; and that Hentz understood perfectly well that this was not a sale in the regular course of business, but for some special purpose of Schaeffer's. Hentz testified that he knew of the "*Colson*" fraud from the newspapers, and that this cotton came from New Orleans. (Hentz's test. fol. 30–32.)

The subsequent acts of the parties show the same understanding. Schaeffer says he gave Mann a bill of the cotton on the 3d of May (fol. 295); that bill is not produced. Mann gave Hentz a bill of it, as above, on the same day (fol. 314). Hentz did nothing to ascertain the weight (fol. 31).

On the 5th or 6th of May Hentz gives his note to

Mann, which is never negotiated, but is passed over by Mann to Schaeffer and held by him till maturity. At its maturity Hentz pays the note to Mann who pays the money directly over to Schaeffer, but Hentz pays only on Schaeffer's guarrantee that he shall be held harmless, although 165 of the 200 bales have been meanwhile seized and delivered to Porter. (Hentz test., fol. 31· Exh. 3, fol. 314).

When Mann passed over Hentz's note to Schaeffer, Schaeffer gave Mann his check for the difference in price between the sale to Mann and that to Hentz, being $\$1\frac{10}{100}$ a bale, as Mr. Schaeffer says, which would amount to $220 (fol. 295), very large pay, it may be observed, for his day's work, especially as the work was done in so bungling a manner.

The receipt for the check was the last that Mann seems to have to do in the transaction, except to collect Hentz's note for Schaeffer. He had done his work and got his pay and is dismissed.

Besides all the direct evidence of the complicity of Mann in Schaeffer's scheme, and of Hentz's connivance at it, we have the further fact that Mann, who has been for twenty-five years an intimate friend of Schaeffer's, and who is alive and in New York, is not called as a witness to say, if the fact is so, that Hentz is mistaken, and that he knew nothing of Schaeffer's plot and bought the cotton in good faith, and to explain how he got the weights inserted in his bill of sale to Hentz.

Besides all this, before the cotton is shipped, Schaeffer or Mann calls on Conklin & Davis, grocers, but who do occasionally ship cotton, and requests the use of their names in making this shipment, and the receipts are actually given to Conklin & Davis, and by them endorsed over to Mann, who applies for and receives the bill of lading on the 4th of May, the name of A. C. Schaeffer & Co. in the freight order-book being altered to Thomas W. Mann. (Conklin's test., fol. 38. William's test., fol. 37. Allen's test., fol. 37. Underhill's test., fol. 37. Exhs. Q. & R. fol. 341.)

On all the evidence it is clear therefore, that the obliteration of the marks on the 165 bales, the mixing of the 165 with the 35 other bales, the hurried shipment,

the receipting of the cotton to Concklin and Davis, the transfer or pretended transfer to Mann, the sale or pretended sale to Hentz, the marking of the 200 bales by two new marks, in lots both differing in number from the number of the "*Ladona*" shipment, were all parts of one consistent scheme of Schaeffer's to destroy all traces of the identity and disposition of the "*Ladona*" cotton, to prevent any other person claiming a title to it as part of the missing "*Colson*" cotton, from making good his claim to it.

(*c*). *The intermingling of the* 140 *bales with the* 25 *bales, and of the* 165 *with the* 35 *bales was complete, and such as destroyed the identity of the cotton, and made it impossible for Porter to distinguish his own cotton.*

It is not known what marks were on the 25 *bales besides* T

The return from Liverpool shows 137 bales with no marks—29 with DD, EE, JJ. O. F. S. or L.—one with Diamond T., and 24 with other marks. Supposing the 24 having other marks to be presumably part of the 35 from West Street, then of the remaing 176 it can only be said that 165 of them are the 165 by the "*Ladona*," and 140 of them are the 140 bales by the *Colson*. (*Ante*., p. 16, 18.)

As to the 24 bales bearing other marks it is not certain that some of these other marks may not have been on the "*Colson*" or the "*Ladona*" cotton, and escaped obliteration.

Although there were no other marks observed in New Orleans than those testified to by the officers and employees of the Shipper's Press, yet no search was made for other or for all marks before the cotton left New Orleans, and a bale of cotton may get many marks.

As already pointed out, some of the bales marked with the "*Colson*" marks may have been West Street bales similarly marked.

The weights furnish no certain means of identifying particular bales, because cotton gains or loses weight with the state of the atmosphere, and an examination of the actual weights of the 140 bales of New Orleans—

differing as they did in weight so slightly, and all within narrow limits, would convince any one of the hopelessness of expecting to pick out of a mass of 200 bales any of the 140. (See Bradfute's weights, fol. 151.)

Besides, Shaeffer alone could have given us the weights of the other sixty bales, and he has not seen fit to do it. There is no reason to suppose, if their weights were made known, that they could be now distinguished.

As before shown, there was no such marked difference in quality shown as served to distinguish one lot of the cotton from another.

But it is a complete and sufficient answer to any suggestion that the 140 or the 165 bales could have been picked out of the mass of 200 bales, that the law throws on the party who purposely mixes similar goods the burden of distinguishing his own or losing them.

Schaeffer could easily have proven the marks on the 35 bales at West Street. He is to be presumed to have been able to show the marks on the 165 by the "*Ladona*," for he had them in his possession four days, and had the marks removed, and has not even testified that he did not know the marks.

He could have also given the weights, bale by bale of the 200 bales, as appears by Mann's bill of sale to Hentz, if that was based on actual weights.

He has a strong interest in disproving the case proved by the claimants that the 140 bales by the "*Colson*" were part of the 200 bales shipped on the "*Idaho*," and that the 140 were so mingled with the 25 and the 165 with the 35 that they could not be distinguished.

The inference is a necessary one, that the production of the marks and weights which he must have the means of producing, would not aid his cause. He made all the confusion. The law imposes on him the burden of clearing it up, and he not only has not done it, but has no produced evidence in his possession which, if the confusion could be cleared up, would tend to do so.

THIRD POINT.—By Schaeffers's unlawful mixing of the 165 bales with the 35 bales, the whole 200 bales became Porter's, and he was therefore justified in taking into his possession any part of it.

I. The same general argument applies to this intermingling as to the other.

It may be claimed that as it was not proved that the other marks were removed from the 35 bales, they, at least, could have been distinguished, and so that the mixing was not complete.

To this there are two sufficient answers.

(*a*). *It does not lie in the mouth of a trespasser who takes my goods and mixes them with his own to say that his goods, which have gone into the mass, have certain marks, known to him but not to me, by which he can distinguish them from mine.*

If he has removed all the distinctive marks known or (having reference to the kind of merchandise in question) any way likely in the course of business to be known to me as the marks of my goods, he has made the confusion absolute, so far as I am concerned; and the fact that he has secret marks not known to me cannot prevent me from following my property, and if he does not pick out his own and I cannot, it is a complete case of confusion which gives me the whole. He cannot by his willful act bar my right to take my own, although in taking it I necessarily take what was his also.

See Roth *vs.* Wells, 29 N. Y., p. 486.

(*b*). *There is no evidence that there were any other marks than S A L and V O X on the 35 bales from West Street.*

Schaffer says they were marked S A L and V O X in Savannah, Georgia; (fol. 294.) The 24 marks found on the 200 bales, different from Porter's marks, do not indicate any common distinguishing mark of a consid-

erable number of bales, but appear to be scattering marks which may have been on any of the 200 bales. They are

T E, 1; J D F, 1; Wash., 2; E, 1; $\frac{F F}{F}$, 1; W & C, 1; ⓪ 5; F S T J R, 1; S S W, 1; [L], 1; S K, 1; V, 1 G, 1; [O E C], 1; [A] [O], 1; G N, 1; [O] [O E C] [R], 1 $\frac{S \& A}{J J P}$ to & Sons, Wash., 1. ⟨L⟩, 1.

(Liv. Com., fol. 260, 263, 291, 292.)
(Ante pp. 16, 17.)

There is not similarity enough in these marks to indicate common distinguishing marks of the 35 bales.

Corcoran could not remember whether he removed the marks from the 35 bales. (Fol. 39.)

Schaeffer, who alone could have given us the marks of the 35 bales, or could have shown that these were other marks, is silent.

It is not proved, therefore, that these are marks, even within the knowledge of Schaeffer, distinguishing or identifying the 35 bales.

There is no doubt, on the other hand, that the 35 were mixed with the others to increase the confusion.

They are the very instruments of trespass and confusion and are conceded to be goods of the same general kind, though not of the very same quality. They are, therefore, all Porter's.

FOURTH POINT—Porter is entitled to hold the whole 165 bales delivered to him in Liverpool.

(*a.*) *On the ground that he owned the whole* 200 *bales, and might have claimed all or any of it.*

(*b.*) *On the ground that he was, at least, entitled to* 165 *bales, and that he has received no more than that number, and that his* 165 *cannot be distinguished from the other* 35 *bales.*

This point has been fully developed before under previous points.

It is only necessary to add here that Schaeffer, and those claiming under him, have failed to prove that Porter has received, among the 165 bales, any which, by the distinguishing marks of the 35 bales from West Street, or by differences of weight or quality, can be distinguished as part of the 35 bales.

As to the 22 bales of uncompressed cotton, they could, indeed, have been distinguished, and there is evidence that the Barings received some of them, but how many, and of what weight, it was for Schaeffer to show, and he has failed to do so. Perhaps, but for the agreement for a promiscuous delivery hereinafter noticed, the libellants might claim a decree upon this evidence for these uncompressed bales, and have a reference to take proofs of their number and weight.

(*c*). *But Porter can hold the whole* 165 *bales delivered to him on the ground that the parties in Liverpool,* (*Finlay & Co., claiming* 200 *bales, Baring Brothers claiming* 65 *bales, and Guion & Co. representing the ship,*) *made an agreement by which all claims growing out of an exchange of bales between the parties were waived, and a promiscuous delivery was assented to, and the cotton was so delivered.*

Thorburn, who personally arranged the matter for Guion & Co., testifies (Liv. Com., fol. 242): "165 "bales were delivered under the direction of Wil- "liams & Guion, and 35 under the B. lading. They "were taken promiscuously. I received from Messrs. "Finlay & Co. the delivery order, of which I annex a "copy, marked B."

"In addition, it was verbally arranged with Baring "Bros. & Co. and Jas. Finlay & Co., that they should

" take the cotton, taken promiscuously, without prejudice " to their respective rights."

(See also delivery order of Finlay, Liv. Com., (fol. 264.)

This paper confirms Thorburn.

It is an order for 35 bales, 21 marked SAL, and 14, VOX, " but we receive such 35 bales without prejudice " to our right to recover the remaining 165 bales " according to B. L.," &c.

It was the obvious interest of all the parties to assent to this promiscuous delivery.

Barings held an order, recognized by Guion & Co. as valid, for 165 bales.

Finlay & Co. held a bill of lading for 200 bales., but Guion & Co. held themselves bound by Williams & Guion's order, to deny their claim to more than 35 bales.

Neither party had the means of identifying his own bales.

Finlay & Co. desired, of course, to get, without question as to their identity, the 35 bales admitted to belong to them, and to reserve their right to a greater number, if it should prove that they were entitled to more.

Barings were desirous to get their 165 bales without running the risk of damages for taking, by mistake, some of Finlay & Co.'s 35.

The ship was desirous of delivering the cargo without incurring the risk of liability to both parties, in case of exchange of bales between them by a mistake in delivery.

So the agreement made was, for the interest of all concerned, the best thing that could be done under the circumstances, and was clearly a waiver by both parties of any claim for an exchange of bales, either against each other or the ship, but reserving, of course, to both parties, the right to insist upon the substantial right of either to more cotton than he received.

It was an agreement not to attempt to identify their respective bales, nor to wait for evidence by which they might be distinguished from each other, but to take them promiscuously, so far as they went, as their own, and as satisfying their demand.

Each party took a like proportion of bales marked SAL and VOX. This conld not have been accidental, and shows that the bales, so far as received, were taken, in satisfaction of their respective claims.

No right was reserved against the ship by Finlay & Co., except for more bales, or, at the utmost, for more cotton than was delivered.

There is no evidence that Finlay & Co. did not receive the full amount of cotton they were entitled to.

According to Lyon (fol. 292) they received 35 bales.....15,225 lbs.
Average..... 435 "

There is no sworn evidence of the weight of the 165 bales, or of the whole 200 bales.

The burden is on Hentz, having consented through Finlay, his agent, to a promiscuous deli/ery, to prove, 1st, an exchange of bales, and 2d, a loss in weight by the exchange. He has not proved, with any certainty, the exchange of bales, except perhaps some (and how many is not shown) of the uncompressed bales, andhe has wholly failed to prove any loss of weight by the exchange, if any there was.

All that appears, tending to show an exchange, besides the uncompressed bales, is, that of the 165 delivered to the Barings ; 17 bear other marks than Porter's or the "*Ladona*" cotton is proved to have borne.

And of the 35 delivered to Finlay, seven bore such other marks.

If this is taken as *prima facie* evidence that the seventeen and seven bales are part of the West Street 35 bales, then it is *prima facie* proof of an exchange of 17 bales.

Beyond this there is no proof of any exchange, for of the other 148 delivered to Barings there is not one that can be distinguished in any way as belonging to the 35 West Street bales, although of the 35 delivered to Finlay there are 28 that may have been part of the "*Ladona*" cotton, either bearing no mark or Porter's marks.

And as to all but the 24, it is clear the mixing was complete.

FIFTH POINT.—The proceedings in the suits at New Orleans are wholly immaterial in this case.

It is claimed by the libellants that Porter has received from the proceeds of the ship "*Colson*" and her cargo within $800 of the whole amount of his advances on the bill of lading for 140 bales, and that this is an equity that can in some way be recognized and made available by Schaeffer in this suit.

The answers are obvious.

1*st.* *The issue in this suit is as to the right of Porter or Hentz, Schaeffer's assignee, to the possession of the* 165 *bales, when they reached Liverpool in May,* 1869. *If Porter was then entitled to the possession of them as against Hentz, and at the time the ship was justified in delivering them to Porter or his order, then no matter if since that time Porter may have received from somebody else a satisfaction, in whole or in part, of the advances made by him on his bill of lading.*

It does not touch the issue here; and if Porter is bound in equity to account with Schaeffer for such receipts, it must be elsewhere.

It seems to be assumed in this claim of equity, that Forbes had a right to take back the 140 bales, and consign them to Schaeffer, subject to Porter's lien for advances. Clearly he had no such right. His taking possession after delivery was wholly unlawful and a trespass, and can give no right to Schaeffer, even to this extent.

2*d.* *The assumed equity of Schaeffer, growing out of the suits at New Orleans, is wholly denied.*

Both Porter and Schaeffer had claims, legal or equitable, against the "*Colson*" and her cargo, growing out of the bills of lading held by them, and the advances made on those bills of lading. In view of these conflicting claims they agreed that Porter's claims shall be prose-

cuted on joint account, and that the proceeds shall be divided *pro rata* according to their advances.

Under this arrangement Schaeffer stands aside and Porter's claims are prosecuted.

Against the ship the particular bill of lading for 139 bales is made the basis of recovery of the proceeds of the ship.

As against the cargo, all the drafts paid by Porter, and his bills of lading, are made the basis of his recovery.

Miller's dep., N. O. Com., fols. 126, 127.
Libel in Porter *v.* "*Colson,*" fol. 172.
Opinion of the Master, in *Porter* v. "*Colson,*" fols. 164, 172.
Decree of the Court, in *Porter* v. "*Colson,*" fol. 162.
Bill in Equity, *Porter* v. *Herron.*
Decree N. O. Com., fols. 155, 157, 158.
Master's Report in N. O. Com., fol. 159.

The parties did divide the proceeds according to the agreement.

That is a final settlement of that fund between them. Upon a good consideration they have agreed upon a distribution *pro rata*, according to their advances, as just and equitable between them, in view of their respective claims.

Unless there was fraud in the settlement, no court can dispute that distribution, or question that rule of equitable distribution, which the parties have themselves adopted.

By that agreement, no doubt, each party has received payment, *pro rata*, of some part of each of his drafts.

But there is neither equity nor justice in Schaeffer's claiming that Porter has received anything more than that proportionate payment of all his drafts, because the basis of the recovery against the ship happened to be one particular bill of lading rather than another, or one of Porter's bills of lading rather than Schaeffer's. He consented to its being so used for a definite purpose, and for his own benefit, and he has received the benefit of it.

3*d*. *This claim ignores entirely Porter's previous advance of* $6,243.27, *whibh was made a lien on this bill*

of lading. And it is also based in part on an obvious error of the witness Miller, in misstating Porter's bill of lading as being for 464 bales, when they call for 833.

SIXTH POINT.—Porter's title, and the delivery to him, are a defence in this suit.

1st—The present rule of law is that a carrier can always show, as an excuse for non-delivery under his bill of lading, that he has delivered the goods, upon demand, to the true owner.

Western Transp. Co. *v.* Barber, 56 N. Y., 552.
Bates *v.* Stanton, 1 Duer., 85.
Bliven *v.* H. R. R. Co., 36 N. Y., 403.
King *v.* Richards, 6 Whart., 418.
Sheridan *v.* N. Quay Co., 4 C. B. (N. S.), 618; S. C., 93 Eng. C. L., 618.
Story on Bail (2d Ed.), § 582, cited and approved in 4 C. B. (N. S.), 650.
Van Winkle *v.* U. S. M. S. Co., 37 Barb., 124.
Finlay *v.* Liv. & G. W. St. Co., in. Ct. of Exchequer, 23 Law Reporter, 251; copy of opinion, fols. 357-375.
Cheeseman *v.* Exall, 4 Eng. L. & E. 438.
2 Kent's Com., p. 756, (11th Edition), p. 767 (9th) Ed.
1 Parson's Cont., p. 678 (2d Ed.).
Parson's Merc. Law, 211.
Rogers *v.* Weir, 34 N. Y., 463.
Bassett *vs.* Spofford, 45 N. Y., 387.

The case of *West Transp. Co. v. Barber*, 56 N. Y., 552, was decided by the Court of Appeals since the decision of this case below, and without reference to it by Court or counsel.

It is true that the decided cases are mostly cases where the shipper had obtained the goods by fraud; but the grounds of the decisions and the opinions of judges and commentators are not limited to that case, but they distinctly repudiate or relax the old doctrine of estoppel as applied to a carrier, where he has yielded to a claim of

cuted on joint account, and that the proceeds shall be divided *pro rata* according to their advances.

Under this arrangement Schaeffer stands aside and Porter's claims are prosecuted.

Against the ship the particular bill of lading for 139 bales is made the basis of recovery of the proceeds of the ship.

As against the cargo, all the drafts paid by Porter, and his bills of lading, are made the basis of his recovery.

Miller's dep., N. O. Com., fols. 126, 127.
Libel in Porter *v.* "*Colson,*" fol. 172.
Opinion of the Master, in *Porter* v. "*Colson,*" fols. 164, 172.
Decree of the Court, in *Porter* v. "*Colson,*" fol. 162.
Bill in Equity, *Porter* v. *Herron.*
Decree N. O. Com., fols. 155, 157, 158.
Master's Report in N. O. Com., fol. 159.

The parties did divide the proceeds according to the agreement.

That is a final settlement of that fund between them. Upon a good consideration they have agreed upon a distribution *pro rata*, according to their advances, as just and equitable between them, in view of their respective claims.

Unless there was fraud in the settlement, no court can dispute that distribution, or question that rule of equitable distribution, which the parties have themselves adopted.

By that agreement, no doubt, each party has received payment, *pro rata*, of some part of each of his drafts.

But there is neither equity nor justice in Schaeffer's claiming that Porter has received anything more than that proportionate payment of all his drafts, because the basis of the recovery against the ship happened to be one particular bill of lading rather than another, or one of Porter's bills of lading rather than Schaeffer's. He consented to its being so used for a definite purpose, and for his own benefit, and he has received the benefit of it.

3d. This claim ignores entirely Porter's previous advance of $6,243.27, *whibh was made a lien on this bill*

of lading. And it is also based in part on an obvious error of the witness Miller, in misstating Porter's bill of lading as being for 464 bales, when they call for 833.

SIXTH POINT.—Porter's title, and the delivery to him, are a defence in this suit.

1st—The present rule of law is that a carrier can always show, as an excuse for non-delivery under his bill of lading, that he has delivered the goods, upon demand, to the true owner.

Western Transp. Co. *v.* Barber, 56 N. Y., 552.
Bates *v.* Stanton, 1 Duer., 85.
Bliven *v.* H. R. R. Co., 36 N. Y., 403.
King *v.* Richards, 6 Whart., 418.
Sheridan *v.* N. Quay Co., 4 C. B. (N. S.), 618; S. C., 93 Eng. C. L., 618.
Story on Bail (2d Ed.), § 582, cited and approved in 4 C. B. (N. S.), 650.
Van Winkle *v.* U. S. M. S. Co., 37 Barb., 124.
Finlay *v.* Liv. & G. W. St. Co., in. Ct. of Exchequer, 23 Law Reporter, 251; copy of opinion, fols. 357-375.
Cheeseman *v.* Exall, 4 Eng. L. & E. 438.
2 Kent's Com., p. 756, (11th Edition), p. 767 (9th) Ed.
1 Parson's Cont., p. 678 (2d Ed.).
Parson's Merc. Law, 211.
Rogers *v.* Weir, 34 N. Y., 463.
Bassett *vs.* Spofford, 45 N. Y., 387.

The case of *West Transp. Co. v. Barber*, 56 N. Y., 552, was decided by the Court of Appeals since the decision of this case below, and without reference to it by Court or counsel.

It is true that the decided cases are mostly cases where the shipper had obtained the goods by fraud; but the grounds of the decisions and the opinions of judges and commentators are not limited to that case, but they distinctly repudiate or relax the old doctrine of estoppel as applied to a carrier, where he has yielded to a claim of

a party, to whom the law made it his duty to deliver the goods, and for non-delivery to whom, he would subject himself to an action of trover.

This is the clear and intelligible principle of the cases, and the commentators, and is distinctly the reasoning of the Court in 56 N. Y., 552.

It is obviously a just rule, and if it is answered that there is a breach of an absolute promise, notwithstanding such delivery to the true owner, it is a sufficient answer: *First*, that the bailor suffers no real damage by the breach of contract, because if redelivered to him the goods would be subject, in his hands, to immediate seizure by, or at the suit of, the true owner; and *secondly*, that every bailment is, in itself, a representation of the bailor, of a right to the possession, and the bailor's promise may properly be held to be upon the tacit condition that the bailee, as agent of the bailor, may lawfully hold the goods.

There is absolutely no precedent for the rule of law claimed by the libellant, and to establish it now would be to establish a principle that the carrier should be punished for doing what the law also declares to be his legal duty, on pain of liability in trover, namely for delivering goods in his possession to the person entitled to them on demand.

2d. *If the rule of law is less favorable to the carrier and even as much so as claimed by the libellants, then the facts in this case excuse the carrier on the grounds:*

First.—That the possession of the goods was obtained by Forbes by an act in itself unlawful, fraudulent or felonious. That Schaeffer & Mann, the shippers, by their acts, whereby they attempted to secure to and fortify in themselves a thief's title, which they suspected to be such, have taken advantage of, ratified and made their own his unlawful act, whereby he procured the goods in fraud of the true owner; and—

Secondly.—If not chargeable by way of such adoption and ratification with Forbes' original fraud, they have themselves been guilty of a new act of trespass upon the

goods, in fraud of the owner, whereby they have obtained a posseesion of it directly fraudulent as against Porter, and so have brought themselves within the rule as most rigidly applied against the carrier.

Not content with resting on a possession which they suspected to give them no title, they have undertaken, in fraud of the owner, to make a better title by a new and direct act of trespass, and by the conversion of the goods to their own use.

Mann's complicity in Schaeffer's proceeding has been fully discussed under a former point.

Before, pp. 31 - 34.

It is clear on the cases, that if Mann was a party to an act whereby he obtained the possession of the goods in fraud of the owner, the carrier is excused, though Hentz were wholly innocent.

See especially Finlay *v.* St. Co. Ct. of Exchequer, *ut supra.*

It is clear upon the proofs that *the sale to Mann was itself one of the means resorted to to make a better title than Schaeffer had before, and to mislead the owner and prevent his finding and reclaiming his goods.* So that whatever possession Mann ever had was, in itself, and independently of any other act of trespass to which he was a party, a possession obtained for the very purpose of defrauding the true owner, and used as a means of defrauding the true owner; and so the case is literally one of a shipper whose possession has its origin in a fraud upon the owner.

Every new act of trespass or ownership done to make good the possession against the person known or suspected to be the true owner, subjects the party committing it to a liability to an action of trover without a demand as a party who has come into wrongful possession.

Covell *v.* Hill, 6 N. Y. 383.
Boyce *v.* Brockway, 31 N. Y., 493.

Besides this direct act of Mann in taking possession, as a means of defrauding the owner, Mann was plainly co-operating with Schaeffer in all his illegal acts, whereby he sought by violence and cunning to prevent the owner

from obtaining his goods, whatever right he might have. Mann lent himself to this scheme. He was himself used by Schaffer to carry it out.

The findings of fact by the District Judge, as to the complicity of Mann and Hentz, are clearly warranted by the evidence.

SEVENTH POINT.—The proceedings in the suit of Porter v. Cutting in the State Court are a defence to this suit.

1. These proceedings were as follows:

May 4, 1869, Porter commenced an action of claim and delivery (Replevin) against Cutting, the master of the Idaho, to recover possession of 165 bales of cotton, part marked SAL and part VOX upon affidavit of title sworn to conformably to the statute of New York, (Affidavit, fol. 331,) and by order to the sheriff to take the same and deliver them to the plaintiff (Order, fol. 333.)

The plaintiff gave security (replevin bond) to the defendant. (Undertaking, fol. 334.) The return of the sheriff shows that he took possession of the 165 bales under the order, and delivered them to the plaintiff May 5th, on receipt of the undertaking. (Return, fol. 329.) On the 5th of May the master of the vessel (defendant in the action) appeared and demanded a copy of the complaint. (Notice of Appearance, fol. 321.) On the same day (May 5th) The Liverpool and Great Western Steam Co., as owners of the "Idaho" and carriers of the cargo, under bill of lading issued by them, made claim to the cotton on affidavit of its agent, as to their interest, (Claim and Affidavit, fol. 330,) and gave notice of their appearance in the action. (Notice, fol. 334.) On the same day (May 5) it was agreed between The Liverpool and Great Western Steam Co. and the plaintiff and defendant that to save the expense of unloading the vessel, the cot-

ton should be considered as actually taken out of the vessel by the sheriff and held by him until the undertaking required by law in such case should be given by the plaintiff, and that upon the plaintiff's giving the security required by law, The Liverpool and Great Western Steam Co. should hold the cotton as shipped by the plaintiff, deliverable in Liverpool to his order, on payment of freight, (Stipulation, fol. 339,) and on the same day, (May 5) the plaintiff gave such undertaking (fol. 339) and a consent that the sheriff release the vessel, (fol. 329).

The complaint in the action was dated May 29th, 1869 On the 24th of July, 1869, the libellants in this action filed their petition in the court where said action was pending, setting forth that the action was still pending, and that the petitioners were purchasers of the cotton from Mann, in whose name it was shipped by bill of lading, and that they desired to litigate the question of title directly with the plaintiff (Petition fol. 323). Upon this petition, after hearing counsel for both parties, an order was made by the court, that the petitioners be made parties to the action, and that the cause thereafter proceed in like manner as though the petitioners had originally been made parties defendant. (Order fol. 324). On the 7th of August these libellaunts appeared in the action. (Notice of appearance, fol. 325). The amended summons and complaint were dated August 20, 1869. (Summons, fol. 326 ; Complaint, fol. 327). January 19, 1870, these libellants demurred to the complaint. (Demurrer, fol. 328.)

Before making this arrangement for delivering the cotton in Liverpool, Mr. Guion, the agent of The Liverpool & Great Western Steam Co., endeavored to find Mann without success; saw Schaeffer, and told him what had happened ; but Schaeffer told him he must see Mann, and made no request to him to do anything. The ship's regular sailing-day was May 5th, and to take the cotton out would have taken at least one day. Having made the arrangement for delivering the cotton in Liverpool, he gave the plaintiff an order on the agents of the vessel there, for the 165 bales. (Letter, fol. 265) (Guion's test, fol. 36.).

2. The sections of the New York Code, which relate to this subject, were at that time (1869) as follows:

CHAPTER II.

Claim and Delivery of Personal Property.

§ 206. (Delivery of personal property.)

The plaintiff, in an action to recover the possession of personal property, may, at the time of issuing the summons, or at any time before answer, claim the immediate delivery of such property, as provided in this chapter.

§ 207. (Affidavit and its requisites.)

Where a delivery is claimed, an affidavit must be made by the plaintiff, or by some one in his behalf, showing:

(1) That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to the possession thereof by virtue of a special property therein, the facts in respect to which shall be set forth.

(2) That the property is wrongfully detained by the defendant.

(3) The alleged cause of the detention thereof, according to his best knowledge, information and belief.

(4) That the same has not been taken for a tax assessment or fine pursuant to a statute; or seized under an execution or attachment against the property of the plaintiff, or if so seized, that it is, by Statute, exempt from such seizure; and

(5) the actual value of theproperty.

§ 208. (Requisition to sheriff to take and deliver the property.)

The plaintiff may, thereupon, by an indorsement in writing upon the affidavit, require the sheriff of the county where the property claimed may be to take the same from the defendant and deliver it to the plaintiff.

§ 209. (Security by plaintiff.)

Upon the receipt of the affidavit and notice, with a written undertaking, executed by one or more

sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit, for the prosecution of the action for the return of the property to the defendant, if return thereof be adjudged, and for the payment to him of such sum as may, for any cause, be recovered against the plaintiff, the sheriff shall forthwith take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall, also, without delay, serve on the defendant a copy of the affidavit, notice and undertaking, by delivering the same to him personally, if he can be found, or his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion.

§ 210. (Exception to sureties.) The defendant may, within three days after the service of a copy of the affidavit and undertaking, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he shall be deemed to have waived all objection to them. When the defendant

§ 211. (Defendant when entitled to re-delivery.) At any time before the delivery of the property to the plaintiff, the defendant may, if he do not except to the sureties of the plaintiff, require the return thereof, upon giving to the Sheriff a written undertaking, executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, if such delivery be adjudged—and for the payment to him of such sum as may for any cause be recovered against the defendant. If a return of the property be not so required within three days after the taking and serving of notice to the defendant, it shall be delivered to the plaintiff, except as provided in Section 216.

§212. (Justification of defendant's sureties.) The defendant's sureties, upon a notice to the plaintiff of not less than two nor more than six days, shall justify before a judge or justice of the peace, in the same manner as upon bail or arrest. Upon such justification the sheriff shall deliver the property to the defendant. The sheriff shall be responsible for the defendant's sureties until they justify, or until justification is completely or expressly waived, and may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he shall deliver the property to the plaintiff.

be bound to keep the property, or deliver it to the plaintiff, unless the plaintiff, on demand of him or his agent, shall indemnify the sheriff against such claim by an undertaking, executed by two sufficient sureties, accompanied by

their affidavits that they each are worth double the value of the property as specified in the affidavit of the plaintiff and freeholders and householders of the county. And no claim to such property by any other person than the defendant or his agent shall be valid against the sheriff unless made as aforesaid, and notwithstanding such claim, when so made, he may retain the property a reasonable time to demand such indemnity.

§ 122. (Court may determine controversy, bring in parties, &c., interpleader.) The Court may determine any controversy between the parties before it, when it can be done without prejudice to the rights of others, or by saving their rights, but when a complete determination of the controversy cannot be had without the presence of other parties, the Court must cause them to be brought in. And when, in an action for the recovery of real or personal property, a person, not a party to the action, but having an interest in the subject thereof, makes application to the Court to be made a party, it may order him to be brought in by the proper amendment.

A defendant, against whom an action is pending upon a contract, or for specific, real or personal property, may, at any time before answer, upon affidavit that a person not a party to the action, and without collusion with him, makes against him a demand for the same debt or property, upon due notice to such person and the adverse party, apply to the Court for an order to substitute such person in his place, and discharge him from liability to either party on his depositing in Court the amount of the debt, or delivering the property, or its value, to such person as the Court may direct; and the Court may, in its discretion, make the order.

3. *A taking by the act of the law excuses the carrier.*

Bliven *v.* H. R. R. Co., 35 Barb., 188.
S. C., 36 N. Y., 403.
Stiles *v.* Davis, 1 Black., 101.
Van Winkle *v.* [redacted] St. Co., 37 Barb., 124.

No doubt the carrier owes a duty to the shipper, and should protect his interest as circumstances will allow.

Under the Revised Statutes which gave the defendant in replevin an immediate trial of the title within two days, it was held by this Court the duty of the carrier to appear and contest the plaintiff's right.

Mary Ann Guest, Olc., 498.
S. C., 1 Blatch., C. C., 358.

But the remedies of the Revised Statutes have been superseded by the code, and this summary trial no longer exists. The carrier is not now held to be obliged to litigate the title for the shipper.

Per Emott, J.

Bliven *vs.* Hudson R. R., 35 Barb., 191.

The carrier is now held excused in yielding to the Sheriff if he gives immediate notice to the shipper.

Bliven *vs.* H. R. R., 36 N. Y., 403.

It can hardly be claimed that there is any definite and positive rule regulating the carriers duty in such a case, regardless of circumstances and of the obligations of the carrier to other parties.

He must notify the shipper, if practicable, or use reasonable efforts to do so, and if he fail perhaps he should appear in the suit and take reasonable means to protect the interest of the shipper. He is not bound to litigate for him nor to bond the goods.

In this case the carrier did both. He notified the shipper, or at least used all practicable means of notifying him, and in default of any action on the shipper's part to protect himself he appeared in the action as claimant of the goods for the benefit of the holder of the bill of lading, and required the plaintiffs to give a bond for value as required by the Code in such a case.

The notice to Schaeffer was, under the circumstances of this case notice to the shipper.

The carrier gave seasonable notice to Schaeffer, but Schaeffer, apparently to avoid inquiry, and to embarrass Porter's movements in reclaiming the cotton, pretended to have no interest and refused to do anything. (Guion's test. fol. 36. Schaeffer's test. fol. 295).

Schaeffer, being in fact the real party in interest, and having thus refused to intervene to protect himself, can not complain that the carrier made the arrangement with the plaintiff in replevin, which, while substantially protecting the holder of the bill of lading by a bond of indemnity, enabled the ship to go to sea.

It is Schaeffer's own fault if he has lost the opportunity to intervene and bond the goods, if indeed a third party intervening has that right.

Mann was a mere nominal owner, and notice to him was unnecessary. (Guion's test., fol. 36. Schaeffer's test., fol. 295).

Schaeffer was using Mann's name for his own purposes, and could have intervened for Mann and in his name.

He knew the time of the sailing of the ship, and virtually he told Guion that he would do nothing.

His going to see his lawyer after seeing Guion is a confession of his own interest (fol. 294).

The arrangement actually made upon Schaeffer's refusal to protect himself, was a proper arrangement for a carrier to make under the circumstances of this case. It secured for the holder of the bill of lading abundant security for the ultimate delivery of the cotton to him if his title was good.

The sheriff having stopped the ship, and so being actually in possession of the cotton, it was entirely competent for the parties to the suit, the plaintiff, in replevin, the defendant and the carrier who had entervened as a party under the Code, to protect the interest of the holder of the bill of lading, after the bond of indemnity to this intervening party had been given, which was necessary to authorize the delivery of the goods by the Sheriff to the plaintiff, to agree that the Sheriff need not actually take the cotton out of the ship and hand it over to the plaintiff, but that it should be considered as taken out and handed over to the plaintiff. And that being done, it was competent for the carrier to agree to take it to Liverpool for the plantiff.

This was a reasonable protection of the shipper, who

could not be found, or being found, as in this case, refused to protect himself.

It would be giving this particular shipper an undue preference destructive to the interests of commerce to hold that a general ship, under obligation to a great number of shippers to leave at a certain day and hour, should be kept in port three days, or delayed at all after her hour of sailing, when his interests can be and were otherwise substantially protected by the measures taken on his behalf by the carrier, and the three days' provision is wholly for the benefit of the defendant, sued in replevin, not for the benefit of a third party intervening for his interest; and the agreement made in that suit did not, therefore, injure the libellant.

Code 209, 210, 216, 122, cited above.

The libellants, by coming in as defendants in that suit, to litigate the title with Porter, have admitted that the suit is duly commenced, and have waived any irregularities. They cannot say the suit is a nullity—they are bound by the Sheriff's return, which shows that he took possession of the cotton, and a proper bond being given, delivered it to the plaintiff.

The fact that the 165 bales, admitted by the plaintiff in that suit to have been delivered to him by the Sheriff, were not, in fact, separated from the others, is of no consequence.

The claim of the plaintiff was for *his* 165 *bales*; and if he proves in that suit that he owns 165 bales, then those are the bales which he admits having received.

It cannot be necessary that the carrier should *insist* on having the Sheriff actually take the goods by force. If he has no power to resist the taking, then he may very properly consent that they be deemed taken, and receive them from the Sheriff, or the plaintiff, on a new bailment.

Hentz, as a party-defendant to that suit, came in as a party after the agreement was made. He was not bound to come in. He must take the suit as he finds it.

The agreement made cannot affect his right to demand judgment for a return of the cotton claimed, if he shall prove his title; for by the agreement the plaintiff is estopped to deny that he has received his 165 bales of cotton.

The fact that the plaintiff's 165 bales were not selected from the 35 other bales, disembarrasses that case from all questions of the identity of the plaintiff's 165 bales and leaves simply the question of the plaintiff's owner ship of 165 bales to be determined.

EIGHTH POINT.--The decree of the Circuit Court, dismissing the Libel with costs, should be affirmed, with costs.

OWEN, NASH & GRAY,
Proctors for Liblts. and Applts.

WM. G. CHOATE,
of Counsel.

INDEX.

—o—

Page.

FIRST POINT.—That Porter owned 140 of the 200 bales shipped on the "*Idaho*," from April 8, 1869..... 3–20

I. That the 140 bales were delivered to and received by the "*Colson*," as and for the cotton described in Porter's B. L., to be carried and delivered according to its terms..... 3–8

(*a.*) Facts relating to shipment..... 3–7

II. That this delivery passed the title to Porter 8–12

III. That the same 140 bales were by Forbes afterwards removed and shipped on the "*Ladona*" with 25 other bales (and herein discussed) 12–23

(*a.*) Direct evidence of removal..... 12–13

(*b.*) Corroborative evidence from proof of marks and testimony of Corcoran, McAdam, Dearden, Jolly, Lyon and the return of marks from Liverpool..... 13–19

Schedules of various marks on cotton.... 16–18

(*c.*) Corroborative testimony as to weights.... 19–20

(*d.*) Evidence as to the covering of bales..... 20–22

(*e.*) Evidence as to quality..... 22–23

IV. That Porter's title has never been divested 23–25

Second Point.—That by the unlawful intermingling of the 25 other bales in the warehouse, Porter became entitled to the whole 165 bales that came by "*Ladona*" (and herein are discussed).. 25–36

I. Law as to confusion of goods..... 25–26

II. Facts as to the mixing of the cotton..... 26–36

(*a.*) Schaeffer's acts and intent, and the discrepancy between his testimony and Corcoran's as to his instructions to Corcoran. 26–31

(*b.*) Mann's and Hentz's complicity with Shaeffer's scheme..... 31–34

(*c.*) The mixing of the 140 with the 25 bales was complete..... 34–35

Third Point.—That by the mingling of the 165 bales with 35 others, Porter got the right to the whole or any part of the 200..... 36–37

(*a.*) Right of a trespasser who mixes goods.. 36

(*b.*) Marks on 35 bales from West street..... 36–37

Fourth Point.—That Porter is entitled to hold the 165 bales delivered to his order in Liverpool, and herein, of the agreement at Liverpool to deliver the 200 bales promiscuously..... 37–40

FIFTH POINT.—That suits at N. Orleans are immaterial 41–43

1. That they are foreign to the issue..... 41

2. That the equity claimed by libellants does not exist..... 41–42

SIXTH POINT.—Porter's title a defense in this suit..... 43–46

1. On general grounds..... 43–44

2. On the proof of Mann's fraud 44–46

SEVENTH POINT.—The proceedings in Porter and Cutting a defense to this suit..... 46–54

1. Statement of said proceedings..... 46–47

2. Provisions of N. Y. Code relating to proceedings in Replevin 48–50

3. A taking by the law, excuses the carrier. 50–54

EIGHTH POINT.—The Relief..... 54

Wright v Porter
6 Bost v Smith 225
vide
36 Ohy-